

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

Writ Petition No.3540 of 2015

(Yavatmal Islamiya Angle Urdu Education Society, Yavatmal
vs.
Ku. Saba Nasreen Abdul Samed Ansari and others)

=====

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

=====

Court's or Judge's Orders

Mr. P.P. Thakre, Advocate for the Petitioner.
Mr. F.T. Mirza, Advocate for Respondent No.1.
Mr. N.S. Khubhalkar, A.G.P. for Respondent Nos.3 and 5.

CORAM : Z.A. HAQ, J.

DATE : AUGUST 7, 2015.

Heard Mr. P.P. Thakre, learned Advocate for the petitioner, Mr. F.T. Mirza, learned Advocate for respondent No.1 and Mr. N.S. Khubhalkar, learned Assistant Government Pleader for respondent Nos.3 and 5.

02] The petitioner-management takes exception to the interim order passed by the School Tribunal allowing the application filed by respondent No.1 and directing the petitioner to reinstate respondent No.1 with continuity of service and pay 50% salary from the date of termination.

03] It is the case of the petitioner-management that respondent No.1 was appointed in place of respondent No.4, after termination of services of the respondent No.4 and the appointment of respondent No.1 was subject to decision of the appeal, which was filed by respondent No.4 before the School

Tribunal. It is submitted that the appeal filed by respondent No.4 was dismissed, however, the petition which was filed by the respondent No.4 challenging the order passed by the School Tribunal came to be allowed and, therefore, the petitioner-management is required to reinstate respondent No.4. It is submitted that there is only one post available in the school for teacher having B.Sc.(Biology), B.Ed. qualifications and as respondent No.4 is required to be reinstated, respondent No.1 cannot be continued in the school. Reliance is placed on the copy of the communication issued by the Education Officer on 26/03/1993, which shows that the approval to the appointment of respondent No.1 was granted subject to decision of Appeal No.201/1992, which was filed by respondent No.4.

It is further submitted that the Tribunal has granted final relief to respondent No.1, which could not have been done at this stage. In support of the submission, reliance is placed on the judgment given in the case of **Public Services Tribunal Bar Association vs. State of U.P. and another,** reported in **(2003) 4 Supreme Court Cases 104.**

04] Mr. Mirza, learned Advocate for respondent No.1 has submitted that appointment of respondent No.1 was not in the post, which was earlier occupied by respondent No.4. The learned Advocate has pointed out the communication dated 18/10/1993 issued by the Education Officer, which shows that

appointment of respondent No.1 was approved and it was not subject to decision of any proceedings. It is pointed out from the above mentioned communication that the appointment of Shri Aagaz Beig Nazir Beig and Ms. Anjuman Aara Nasrulla Khan were subject to decision of appeals filed by Shri Abdul Vakil and Shri Abdul Rafique before the School Tribunal. Mr. Mirza, learned Advocate has further pointed out the specific stand of the petitioner-management before the School Tribunal in the written statement in this regard. In paragraph No.3 of the written statement, the petitioner-management stated as follows :

“3. It is absolutely false to say that respondent No.4 is appointed as Assistant Teacher in place of the appellant..... The appointment of the appellant was therefore on purely temporary basis and that too for middle classes. Whereas, the respondent No.4 is appointed after receipt of recognition from the Government for running the High School, as a High School Teacher, on a clear vacancy. The respondents submit that on the date of appellant's appointment i.e. on 24/06/1991, the Management had not recognition or approval from the Government to run the higher classes. It is, therefore, false to say that respondent No.4 was appointed in place of the appellant.”

The reference to respondent No.4 is to the present respondent No.1 and the reference to the appellant is to the present respondent No.4.

05] The written submissions filed by the petitioner-management in Writ Petition No.4404/2011 also falsifies the claim of the petitioner-management. In paragraph 9, the petitioner-management had stated as follows :

“9. The answering respondents No.1 to 3 humbly submit that the respondent No.4 came to be appointed as a High School Teacher after getting approval and recognition of the school from the Government of Maharashtra. It is vehemently denied that, the appointment of the respondent No.4 was on the same post after the termination of the petitioner as contended by the petitioner in the petition. The appointment of the respondent No.4 was on clear vacancy of Assistant Teacher for the High School, whereas the petitioner was appointed purely on temporary basis and for middle school.”

The reference to respondent No.4 means the respondent No.1 in the present petition and the reference to petitioner means the present respondent No.4.

06] Mr. Mirza, learned Advocate for the respondent No.1 relying on the judgment given by the Division Bench of this Court in the case of **Maharashtra Shikshan Sanstha, Nagpur and another vs. Education Officer, Zilla Parishad, Nagpur and others**, reported in **1995(1) Mh.L.J. 875** has submitted that the Tribunal has the power to grant interim order in the mandatory nature.

The petitioner relies on the reply, which was filed by it opposing the application filed by respondent No.4 before the School Tribunal praying for permission to amend the memorandum of appeal. The learned Advocate for the petitioner refers to paragraph 1 of the reply, in which it is stated that the present respondent No.4 was not trained at the time of his appointment and he was not appointed in clear vacancy. The learned Advocate has further referred to averments to the effect that the present respondent No.1, who was having the training qualifications, was appointed as Assistant Teacher in place of respondent No.4. It is submitted that it is the case of the petitioner right from the beginning that the appointment of respondent No.1 was made after the termination of the services of respondent No.4.

07] After considering the submissions made by the learned Advocates for the respective parties, I find that the petitioner-management has been changing its stand. The Tribunal has recorded that the appointment order issued to respondent No.1 does not show that her appointment was made in place of respondent No.4 and that her appointment was subject to decision of the appeal filed by respondent No.4. Though the Education Officer has granted approval by the communication dated 26/03/1993 to the appointment of respondent No.1 subject to decision of Appeal No.201/1992, the

appointment of the respondent No.1 at that time was for the period from 01/10/1992 till 30/04/1993. The respondent No.1 was again appointed in the academic session 1993-94 and the proposal was sent to the Education Officer seeking an approval to her appointment and the Education Officer by the Communication dated 18/10/1993 granted approval to the appointment of respondent No.1 for probation period from 01/07/1993. This order does not show that the appointment of respondent No.1 was subject to decision of the appeal filed by respondent No.4 before the Tribunal. Moreover, the statement made by the petitioner-management on oath while opposing the claim of respondent No.4 shows that the appointment of the present respondent No.1 was not in the post which was earlier occupied by respondent No.4.

08] In these facts, it cannot be said that the Tribunal has committed an error while passing the impugned order granting interim relief to respondent No.1, who had been in the employment since 1993 and her appointment has been made after following due procedure and is approved by the Education Officer. The reliance placed by the learned Advocate for the petitioner on the judgment given in the case of Public Services Tribunal Bar Association vs. State of U.P. and another is misdirected. Mr. Mirza, learned Advocate for the respondent No.1 has rightly relied on the judgment given by the Division

Bench of this Court in the case of Maharashtra Shikshan Sanstha, Nagpur and another vs. Education Officer, Zilla Parishad, Nagpur and others, which lays down that in appropriate cases, the Tribunal has the power to grant interim order of a mandatory nature.

09] However, in my view, the Tribunal should not have directed the petitioner-management by an interim order to pay the arrears of salary to respondent No.1 from the date of termination. If the respondent No.1 succeeds in the appeal, she can be compensated as far as this aspect is concerned.

Hence, the following order :

- (1) The directions given by the Tribunal to reinstate respondent No.1 are maintained.
- (2) The directions given by the Tribunal to the petitioner to pay 50% of arrears of the salary from the date of termination are modified and the petitioner is directed to pay 50% salary to respondent No.1 from 01/05/2015 i.e. after the Tribunal has passed the interim order.
- (3) The petitioner shall continue to pay 50% of the salary to respondent No.1 till decision of the appeal.

At this stage, Mr. Mirza, learned Advocate for respondent No.1 has submitted that the respondent No.1 is entitled for the entire salary as she is working and her

appointment is approved by the Education Officer. However, as respondent No.1 has not challenged that part of the order passed by the School Tribunal, I am not inclined to consider the submission made on behalf of the respondent No.1.

(4) The impugned order is modified in the above terms.

(5) The writ petition is disposed of. No costs.

At this stage, the learned Advocate for the petitioner requests that the effect and operation of this judgment be kept in abeyance for a period of four weeks. The request made on behalf of the petitioner is opposed by respondent No.1.

This Court had not granted any interim order during the pendency of the petition. In the facts of the present case, I am not inclined to accept the request made on behalf of the petitioner-management. The request is rejected.

JUDGE

*sdw