

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

WRIT PETITION NO. 18 OF 2014

Hiralal Tejram Tarhekar Vs. Ramesh Shikshan Sanstha Kudegaon & Ors.

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

Court's or Judge's Order

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Shri P. N. Shende Adv for petitioner.
Smt. U. A. Patil Adv for respondent no. 1.
Shri H. N. Verma Adv for respondent no. 3.

CORAM: A. S. CHANDURKAR J.

DATED: FEBRUARY 09, 2015.

Challenge in the present writ petition is to the judgment dated 28.06.2013 passed by the learned Presiding Officer School Tribunal Nagpur, dismissing the appeal filed by the present petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (for short the said Act).

According to the petitioner he had obtained the qualification of H. Sc. D. Ed. and he belonged to the other backward class category. He was issued order of appointment for the period from 01.07.1997 till 30.04.1998. His services came to be terminated w. e. f. 30.04.1998 and hence he filed

appeal under Section 9 of the said Act.

The stand of the management was that the appointment of the petitioner was purely of a temporary nature. It was also stated that his services came to be terminated in terms of order of appointment itself. It was also stated that as the petitioner was overage when he was appointed, said appointment was subject to said fact being in condoned by the competent authority.

The School Tribunal initially allowed the appeal by judgment dated 19.03.2008. However, in Writ Petition No. 3111 of 2009 this Court set aside said judgment and remanded the proceedings for fresh adjudication keeping all questions regarding age relaxation, approval etc. open.

Thereafter by the impugned order the School Tribunal recorded a finding that the petitioner was over age when he was appointed and the proposal for condoning the said fact was rejected. It, therefore, dismissed the aforesaid appeal.

Shri P. N. Shende, learned counsel appearing for the petitioner submitted that learned Presiding Officer did not

consider the manner in which petitioner came to be appointed and though there were directions to consider whether the appointment was in clear and permanent vacancy no such finding was arrived at. It was further submitted that petitioner had an experience prior to his appointment with the respondent nos. 1 and 2. In terms of Government Resolution dated 27.05.2004 the appointment of the petitioner was liable to be approved after condoning the aspect of his being overage. He, therefore, submitted that the learned Presiding Officer erred in dismissing the said appeal.

Smt. U. A. Patil, learned counsel appearing for respondent nos. 1 and 2 supported the impugned judgment. It was submitted that appointment of the petitioner was conditional and subject to age relaxation. It was further submitted that though the appeal was sought to be amended by adding paragraph 5(1), application for amendment was subsequently not pressed. It was, therefore, submitted that the learned Presiding Officer rightly dismissed the appeal as filed.

Shri H. N. Verma, the learned counsel appearing for

respondent no.3 submitted that the Education Officer had rejected the approval to the petitioner's appointment on the ground that he was over age.

I have considered aforesaid submissions. The order of appointment clearly indicates that the appointment of the petitioner was purely of a temporary nature for the period from 01.07.1997 to 30.04.1998. It further states that if the aspect of petitioner being overage was not condoned by the competent authority then the appointment would come to an end.

It is not in dispute that the petitioner was aged 36 years when he was appointed. This was over and above the permissible age of appointment. The further fact that no approval was granted to the appointment on this count indicates that in terms of order of appointment the petitioner had no right to continue in employment thereafter. There is no material placed on record to show that the petitioner's appointment ought to have been made on probation in these circumstances. The School Tribunal therefore after considering this aspect has refused to interfere with the order

of termination.

From the aforesaid facts it cannot be said that the view as taken is either contrary to law or is perverse. Admittedly, the petitioner did not pursue the application for amendment which was the basis for claiming the right to continue in employment. Hence, in aforesaid background the order passed by the School Tribunal cannot be faulted with. Hence, there is no merit in the Writ Petition. Same is, therefore, dismissed with no order as to costs.

JUDGE

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