

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2970 OF 1997

Chavan Pandit Bhimla,
Age-27 years, Occu-Service-
Teacher in Post Basic Asram School,
Waghdara (Tanda), Tal.Gangakhed,
Dist.Parbhani

PETITIONER

VERSUS

1. The President,
Magasvargiya Savalal Shikshan
Prasarak Mandal, Waghdara (Tanda),
Tal.Gangakhed, Dist. Parbhani,
2. The Headmaster,
Saraswati Post Basic Ashram Shala,
Waghdara (Tanda),
Tal.Gangakhed, Dist.Parbhani,
3. Rama S/o Shama Rathod,
Age-Major, Occu-Service,
R/o Saikheda, Tq.Gangakhed,
Dist.Parbhani,
4. The District Social Welfare
Officer, Dist.Parbhani

RESPONDENTS

Mr.P.B.Rakhunde, Advocate for the petitioner.
Mr.K.B.Jadhav h/f Mr.S.B.Bhapkar, Advocate for respondent No.1.
Mr.R.J.Godbole, Advocate for respondent No.3.
Respondent Nos. 2 and 4 are served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/05/2016

ORAL JUDGMENT :

1. This petition was Admitted by order dated 05/08/1997.
2. The petitioner was respondent No.4 in Appeal No.115/1995 filed by respondent No.3 / appellant herein. It was the case of the appellant that he was appointed on 02/12/1991 as an “Untrained Assistant Teacher”. Subsequently, he was recommended by the Management for the B.Ed. Course as an in-service candidate. Even the Education Officer approved his proposal for training. After he returned from training, and attempted to resume duties on 22/06/1995, the Management orally refused to allow him to join duties. Hence, the appeal u/s 9 of the M.E.P.S.Act.
3. Grievance of the petitioner is that the appeal was allowed by the impugned judgment dated 17/12/1996 and the oral termination of the appellant was set aside. He was granted reinstatement with continuity and back wages, leading to the termination of the petitioner on 25/01/1997. It is conceded by the learned Advocate for the petitioner on instructions that his termination dated 25/01/1997 has not been challenged u/s 9 before the Tribunal.
4. The petitioner submits that he was appointed as a Teacher on

01/07/1994. The appellant was appointed on 02/12/1991. Services of the petitioner were approved. Services of the appellant were not approved when he was recommended for the B.Ed. Course.

5. The learned Advocate for the petitioner strenuously submit that the Tribunal has violated the principles of natural justice by not hearing the petitioner. He relies on the following judgments on the point of adherence to the principles of natural justice.

- [i] *Sk.Jakir Sk.Babu Vs. State of Maharashtra and another, 2008(4) Mh.L.J. (Cri.) 495,*
- [ii] *Yawalkar Pesticides Pvt.Ltd., Nagpur Vs. Nagpur Municipal Corporation and another, 2011(5) Mh.L.J. 806,*
- [iii] *Celina Almeida Vs. Minister of Urban Development, Goa and others, 2013(4) Mh.L.J. 53.*

6. The record and proceedings reveal that the petitioner, despite service of the Tribunal, chose to remain absent and did not file a written statement. In these circumstances, it cannot be said that the Tribunal has failed to observe the principles of natural justice.

7. It is further stated that the petitioner was not heard by the Tribunal. I have considered paragraph No.5 of the impugned judgment which indicates that the petitioner was served with the

notice by the Tribunal. He did not appear in the proceedings and did not file his written statement or say. It also cannot be ignored that the Management had challenged the impugned judgment in WP No.2253/1997 and the said petition has been dismissed in default. Same has not been restored.

8. The appellant has now settled in employment after he was reinstated. The petitioner was subsequently absorbed as a Lab Assistant and he is in the confirmed service of the Management. This Court, while admitting the petition on 05/08/1997, did not grant interim relief to the petitioner.

9. Rule 6 of the M.E.P.S.Rules, 1981, by the second proviso indicates that an untrained graduate teacher, after obtaining the permission from the Education Officer, can be continued in service. He shall be continued in service on the condition that he obtains the prescribed training qualification at his own costs. This proviso was made applicable for the cases prior to the introduction of the Rules. Needless to state, even in this case, though it would not be covered by the said proviso, the appellant has acquired the training qualification and the Tribunal has therefore rightly reinstated him in service considering the fact that he was undergoing the B.Ed. course and

had not abandoned employment. So also, he was senior to the petitioner and the petitioner was appointed on 01/07/1994 which is prior to the date of termination of the appellant.

10. In the light of the above, I do not find that the impugned judgment which has set aside the act of the employer in orally refusing work to the appellant despite having acquired the training qualification, could be termed as being perverse and erroneous.

11. As such, this petition is devoid of merit and is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)