

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 425 OF 1997

1. The Secretary,
Dayanand Education Society,
Latur.

2. The Principal,
Dayanand Arts (Jr) College,
Latur.

..Petitioners

Versus

1. Gangadhar Sambhaji Deshmukh
Age 43 years, Occ. Nil,
R/o C/o Sambhaji Namdeo Akangire,
Near Chetan Niwas, Prakash Nagar,
At Latur.

2. Dy. Director of Education,
Aurangabad Region, Aurangabad.

3. The State of Maharashtra

4. Deelip Namdeo Nagorgoje,
Age major, Occ. Service
R/o Dayanand Arts (Jr) College,
Latur.

5. Director of Higher Education,
Pune.

..Respondents

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Advocate for Petitioners : Smt. Anjali Bajpai Dube
AGP for Respondents 2, 3 & 5 : Shri S.B.Joshi
Advocate for Respondent 1 : Shri V.G.Sakolkar
Advocate for Respondent 4 : Shri S.D.Karkare
h/f Shri A.M.Karad

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WITH

WRIT PETITION NO.2583 OF 1998

Deelip Namdeo Nagorgoje,
Age 27 years, Occ. Service
R/o Dayanand Arts (Jr) College,
Latur.

..Petitioner

Versus

1. The State of Maharashtra
2. The Principal,
Dayanand Arts (Jr) College,
Latur.
3. The Secretary,
Dayanand Education Society,
Latur.
4. Dy. Director of Education,
Aurangabad Region, Aurangabad.
5. Gangadhar Sambhaji Deshmukh
Age 43 years, Occ. Nil,
R/o C/o Sambhaji Namdeo Akangire,
Near Chetan Niwas, Prakash Nagar,
At Latur.

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Advocate for Petitioner : Shri S.D.Karkare
h/f Shri A.M.Karad
AGP for Respondents 1 & 4 : Shri S.B.Joshi
Advocate for Respondents 2 & 3 : Smt. Anjali Bajpai Dube
Advocate for Respondent 5 : Shri V.G.Sakolkar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016

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ORAL JUDGMENT :-

1. The petitioners in the first petition are the management and Principal of the educational institution, who are aggrieved by the judgment dated 6.11.1996, delivered by the School Tribunal, Aurangabad, by which, Appeal No.156 of 1995, filed by respondent No.1 was allowed and he was granted reinstatement as a Full Time Lecturer in Philosophy (against S.T. category), for the academic year

1995-96. Respondent No.4 in the first petition has filed the second petition, challenging the same judgment of the School Tribunal, being apprehensive that if respondent No.1/ employee / original appellant is reinstated, he is likely to lose his employment.

2. By order dated 6.2.1997 the learned Division Bench of his Court admitted the Writ Petition and stayed the impugned judgment by granting interim relief in terms of prayer clause (B) in the first petition. By an order dated 24.3.2000 passed by this Court in Civil Application No.318 of 2000, filed by respondent No.4 herein, the Education Department was directed to grant approval to respondent No.4 and which was subject to the result of the petition.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. The undisputed factors emerging from these petitions are as under:-

(a) For the academic year 1992-93, the appellant Gangadhar Sambhaji Deshmukh was appointed as a Lecturer against the post reserved for S.T. category in Philosophy.

(b) Even after the second advertisement for 1993-94, a candidate belonging to the S.T. category was not available and

hence the appellant was continued.

(c) Same situation occurred in the academic year 1994-95 and the appellant was continued.

(d) In the academic year 1995-96, an advertisement was published calling for applications in the Philosophy subject for two posts, one being reserved for S.T. category and one for other backward category.

(e) Respondent No.4, who is the petitioner in the second petition, belongs to the caste Vanjari, which was said to fall under O.B.C. and was appointed in the said category.

(f) The appellant was not appointed against the S.T. category since the management had received a letter dated 22.5.1995 from the Deputy Director of Education by which it was directed not to appoint a candidate from the open category against the post reserved for the S.T. category.

(g) The appellant preferred Appeal No.156 of 1995 and the Tribunal, by the impugned judgment, concluded that when no candidate from the S.T. category was available, the appellant should have been appointed again for one academic year against the S.T. category.

(h) There is no dispute as regards the appointment of respondent No.4 from the O.B.C. category and the said issue was neither addressed to the School Tribunal, nor to this Court. There are no pleadings in relation to any dispute regarding respondent No.4.

(i) As such, since the second petition filed by respondent No.4 is purely out of apprehension that he might lose his job, the said petition is disposed off and Rule is discharged.

5. The undisputed factors mentioned above clearly indicate that the appellant, at best, had a right to continue for one academic year on the post reserved for the S.T. category. No further right can be said to have been created in his favour since that was the fourth academic year for which, the post reserved for S.T. was again advertised. It is trite law that such a post has to be advertised atleast five times for five consecutive years and in the event no candidate belonging to that reserved category is available, the reservation is shifted to the next reserved category as per the roster system. It is in these circumstances that the Tribunal has rightly concluded that the appellant can only be accommodated for one academic year 1995-96. This conclusion of the Tribunal has not been challenged by the appellant before this Court.

6. It cannot be ignored that the issue as regards the appointment of respondent No.4 was neither subjudice before the School Tribunal, nor is this Court required to deal with that issue in its supervisory / writ jurisdiction. So also, there is no conflict of interest in between the appellant, who belongs to the open category and respondent No.4, who now belongs to the N.T. (G) category, the appellant who

belongs to the open category was appointed against the S.T. category. So also, this Court by order dated 24.3.2000 has directed the grant of approval to the services of respondent No.4. Consequentially his services have been approved and now he is settled in employment for the last 21 years.

7. In the light of the above, the only issue that needs to be considered is as regards the fate of the appellant. The Tribunal has granted him reinstatement only for one academic year 1995-96, for being accommodated against the S.T. category, temporarily. He has accepted the said order. Nevertheless, he was not reinstated in service and could not have been reinstated in service, since the Tribunal's judgment was delivered after the end of the academic year 1995-96 on 6.11.1996. Apparently, he has not worked in that academic year. However, it needs to be noted that he has suffered rigors of litigation and unemployment for one academic year on account of the act of the petitioner / management. I, therefore, deem it proper, just, appropriate and equitable to grant the appellant compensation of six months' wages, inclusive of all allowances under Section 11(2)(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

8. The first petition is, therefore, partly allowed by modifying the relief granted by the School Tribunal in Clause (3) to the

appellant and by directing the petitioner / management to pay six months' gross salary, inclusive of all allowances, as were admissible to a Full Time Lecturer in the academic year 1995-96 along with interest @ 6% per annum from November 1996 till it is actually paid, under Section 11(2)(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The petitioners shall, therefore, pay these amounts to the appellant within a period of three months from today.

9. Rule is made partly absolute in the first petition in the above terms.

10. Since the second petition filed by the respondent No.4 is purely out of apprehension that he might lose his job, as held earlier, the said petition is disposed off and the Rule is discharged.

11. Pending Civil Applications, if any, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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