

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8749 OF 2015

TALAT SHIKSHAN MANDAL

PETITIONER

VERSUS

SHAIKH HAFIZ SHAIKH HABEEB AND
OTHERS

RESPONDENTS

Mr.A.M.Karad, Advocate for the petitioner.

Mr.Vivek J.Dhage, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/01/2016

PER COURT :

1. By the impugned judgment dated 09/07/2015, the School Tribunal, Aurangabad has allowed Appeal No.25/2009 filed by the respondent No.1 employee.

2. I have heard Mr.Karad, learned Advocate for the petitioner and Mr.Dhage, learned Advocate for respondent No.1/employee.

3. There is no dispute as regards the employment of the respondent No.1 from 10/06/2002 till his termination on 31/08/2007. There is also no dispute that the proposal for approval dated 20/04/2005 forwarded by the petitioner to the competent authority of the Education Department, has been rejected on

24/08/2007 only on the ground that the respondent, who is born on 24/05/1970, was 32 years old as on 10/06/2002 and hence, over-age.

4. Rule 9(4) of the M.E.P.S.Rules, 1981 read as under :-

“4. The age limit for appointment to any post in a a school shall be as follows, namely :-

(a) for an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than (28) years of age, and in the case of candidate belonging to the Backward Classes he shall not be more than (33) years of age:]

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy director.

+ The figures and words “25 years” and “30 years” are substituted by figures and words “28 years” and “33 years” by Not.No PST 1083/194/SE-3, Cell, dated 20.12.1984.

(b) For an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years.”

5. The grievance voiced by the petitioner is that the School Tribunal has come to a conclusion that as the respondent/employee

belongs to a reserved category, he would enjoy the benefit of relaxation of age under Rule 9(4)(a) reproduced as above, which conclusion is unsustainable since the post occupied by respondent No.1 was neither reserved for any caste/tribe or category nor had respondent No.1 applied on the basis of belonging to a reserved caste. Mr.Karad further submits that the caste validity certificate had also not been furnished by respondent No.1 as on the date of his termination.

6. Mr.Dhage has strenuously supported the impugned judgment. He further submits that the School Tribunal has not directed the petitioner/Management to pay 30% back wages as have been awarded. The petitioner is required to forward the bills to the concerned Education Officer and respondent No.1 has no claim as against the petitioner to the extent of the back wages. Respondent No.1, who is present in the Court, is willing to file an affidavit so as to indicate that he would press for back wages only from the Education Officer and not as against the petitioner/Management.

7. I have considered the submissions of the learned Advocates, as have been recorded hereinabove.

8. The phraseology set out in Rule 4(a) is not in connection with any post reserved for any particular category. It is an inbuilt relaxation for the persons belonging to the backward classes with regard to the ceiling on the maximum age for being appointed as a Teacher. By effect of Rule 4(a), any candidate belonging to the backward class would enjoy the relaxation of 3 years upto the age of 33 years notwithstanding whether the post is reserved for a category or is not under any reservation. The impugned judgment, therefore, calls for no interference.

9. Mr.Karad submits on instructions from the senior representative of the petitioner present in the Court that respondent No.1 may join on the post on which he was working earlier within a period of 15 days. He shall submit an attested copy of his caste certificate and original certificate which would be forwarded to the competent authority for scrutiny and validation. If the claim is validated, he would be continued in employment. If the claim is invalidated, he would be terminated since he would not be entitled to enjoy the benefit of Rule 9(4)(a) and he shall thereafter raise no grievance about such termination.

10. Mr.Dhage submits on instructions from respondent No.1

present in the Court that he would claim his back wages to the extent of 30% from 31/08/2007 till the date of joining duties, only with the Education Officer and shall not raise any claim as against the petitioner. In the event his caste claim is invalidated, the petitioner is at liberty to dispense with his services, since he would thereafter not be entitled to the benefit of Rule 9(4)(a).

11. In the light of the above statement, Mr.Karad submits on instructions that this petition can be disposed of by recording the above statements.

12. As such, this petition is disposed of with the following directions :-

- [a] Respondent No.1/employee shall report for duties on 11/01/2016 at 7.30 a.m. and shall submit a joining report.
- [b] Respondent No.1 shall also submit his caste certificate in original alongwith an attested copy so as to enable the petitioner to retain the attested copy and forward the original to the competent caste validity committee for scrutiny and validation.
- [c] In the event, the caste claim of respondent No.1 is validated, he shall continue in employment as per rules and shall be granted notional continuity of service from 31/08/2007 till 11/01/2016.
- [d] In the event his caste claim is invalidated, the petitioner will be at liberty to dispense with his services and such disengagement shall relate back to the date of termination 31/08/2007.

- [e] From 11/01/2016 till the decision of competent Caste Scrutiny Committed under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, respondent No.1 shall be entitled to regular salary as per his attendance in the concerned school of the petitioner. For the said purpose, the petitioner shall forward the proposal/salary bills of respondent No.1 employee to respondent No.2 / Education Officer.
- [f] In so far as the back wages as granted by the School Tribunal for the period 31/08/2007 and extended upto 10/01/2016 are concerned, the petitioner shall forward the said proposal to the competent Education Officer / respondent No.2 herein. Respondent No.2 shall decide the said proposal within a period of 8 (eight) weeks from today and if the decision is prejudicial to respondent No.1 employee, he shall be at liberty to assail the said decision as per the legal remedy available.
- [g] The Caste Scrutiny Committee competent to consider the claim of respondent No.1/employee is expected to decide the said claim as expeditiously as possible, preferably on or before 31/12/2016.
- [h] Respondent No.1 shall file an affidavit in this Court stating therein the statements that have been orally made in the Court and recorded in this order today, with a copy to be supplied directly to the petitioner/Management.

(RAVINDRA V. GHUGE, J.)