

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12327 OF 2015

1. Pratibha Niketan Education Society,
Nanded, through its General Secretary,
Sakharam Digambarrao Mahajan,
Aged 73 years, Occ. Retd. Principal
R/o 53, Bhagyanagar, Nanded.

2. Pratibha Niketan High School,
Nanded, through its Head Master,
Shri Anand Kondiba Gaikwad,
Age 55 years, r/o Nanded.

..Petitioners

Versus

1. Vijay Gangaram Khuniwad,
Age 47 years, Occ. Teacher,
R/o Bhimai Building,
Uday Nagar, Nanded.

2. The Education Officer (S),
Zilla Parishad, Nanded.

..Respondents

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Advocate for Petitioners : Shri Kulkarni Suresh M.
Advocate for Respondent 1 : Shri Vibhute S.M. h/f Shri Awate U.R.
AGP for Respondent 2 : Smt. Raut S.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 11, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / management is aggrieved by the judgment and order dated 21.8.2015 delivered by the School Tribunal in Appeal No.43 of 2014, by which the said Appeal filed by the respondent employee has been allowed.

5. Shri Kulkarni, learned Advocate for the petitioner has strenuously assailed the judgment of the Tribunal on the ground that the petitioner has played a systematic fraud on the management and got an appointment on the post which is reserved for the S.T.category. He projected himself as being belonging to the Rajgond tribe, which falls under the Scheduled Tribes Category. The post was reserved for Scheduled Tribes. He joined employment at the age of 23 years on 21.9.1990. He produced a tribe certificate dated 28.6.1984 indicating that he belonged to the Scheduled Tribe. Based on the said tribe certificate, he claimed to be belonging to the Rajgond tribe and continued in employment.

6. On 18.5.2013, the State Government introduced a Government Resolution based on which, those employees who had acquired employment on an incorrect caste / tribe certificate, were permitted to surrender the said certificate and if they were appointed prior to 15.6.1995, their services would be protected. Shri Kulkarni submits that no sooner had the Government Resolution been introduced, the employee promptly surrendered his Rajgond tribe certificate since he knew that he did not belong to Rajgond tribe. Thereafter, he produced another caste certificate

dated 18.8.2010 indicating that he belonged to Kalal - 254 caste, which fell under the Other Backward Classes (OBC).

7. Shri Kulkarni, therefore, voiced a grievance that the fact that the employee possessed the caste certificate of Kalal dated 18.8.2010, the fraud played by him is writ large on the face of the record. He did not divulge this fact to the management and continued in employment on the basis of the S.T. certificate. Had the Government Resolution dated 18.5.2013 not been introduced, he would have continued to act fraudulently and would have continued in employment by suppressing the fact that he already had acquired the caste certificate of Kalal dated 18.8.2010.

8. He further submits that the concerned employee was expected to be truthful. It was not a case that his claim towards a particular caste / tribe was rejected and only then he realized that he did not belong to the Rajgond tribe. In fact, the school leaving certificate, which was issued to the employee by the concerned school when he left the school on 31.12.1981, bears his caste as Kalal. This would, therefore, conclusively establish that he knew that he belonged to the Kalal caste. Considering these facts that the school leaving certificate indicated his caste as Kalal and that he obtained the concerned Kalal caste certificate on 18.8.2010, establish the fraud played by the petitioner.

9. He, therefore, submits that the reliance placed upon the reported

judgments of the Honourable Apex Court and of this Court in the matters of State of Maharashtra Vs. Milind and others [(2001) 1 SCC 4], Shalini Vs. New English High School Association and others [Civil Appeal No.10997 of 2013] and Arun Vishwanath Sonone and others Vs. State of Maharashtra and others [2015(1) Mh.L.J.457] is misplaced. The School Tribunal has merely considered the ratio laid down in the said judgments without taking note of a material conclusion of the Apex Court in the case of Shalini (supra) and of this Court in the Arun's case (supra) that the protection of service is not to be extended to fraudulent employees. In the alternative, he submits that the petitioner / management has enough material to prove a fraud against the respondent / employee by conducting a departmental enquiry. He, therefore, prays for setting aside the impugned judgment.

10. Shri Vibhute, learned Advocate appearing on behalf of the respondent / employee submits that the conduct of the employee does not indicate any fraud played by him. He was only 17 years old and naturally a minor, when his father obtained the tribe certificate on 28.6.1984 indicating that the employee belonged to the Rajgond tribe. There was no eventuality of applying for any post of Assistant Teacher in 1984. He applied for the post of Assistant Teacher reserved for the S.T.category in 1990 and the petitioner appointed him as an Assistant Teacher on 21.9.1990, when he was about 23 years and 8 months old.

11. Shri Vibhute submits that the employee cannot dispute that he had received the caste certificate dated 18.8.2010, indicating that he belonged

to the Kalal Caste, falling in the O.B.C. He however, submits that when the Government Resolution dated 18.5.2013 was introduced he became aware of the scheme by which his service would be protected since he has relied upon a tribe certificate obtained by his father and was not guilty of acquiring the same when he was a minor. Hence he promptly surrendered his tribe certificate and informed the management that he belonged to the Kalal caste.

12. He, therefore, submits that the employee deserves to be protected by the judgments of the Honourable Supreme Court in the case of Milind and Shalini (*supra*) and the Full Bench judgment of this Court in the case of Arun Sonawane (*supra*).

13. In response to the proposal of the petitioner that the employee may opt for voluntary retirement and he would be relieved by issuing a clean certificate, he submits on instructions that the employee does not desire to opt for voluntary retirement and is willing to face the departmental enquiry as has been ordered by the School Tribunal.

14. I have considered the submissions of the learned Advocates. The employee has not challenged the impugned judgment before this Court and has thus accepted the same.

15. Issue is as to whether an exception can be carved out on the basis of a fraud played by the respondent / employee in the light of the

observations in the judgment of the Honourable Supreme Court in the matter of Shalini (supra) and the Full Bench judgment of this Court in the matter of Arun Sonawane (supra).

16. The School Tribunal has allowed the Appeal partly and has set aside the termination order. However, the petitioner / management has been granted the liberty to conduct a departmental enquiry against the employee for the reason that the petitioner has alleged a fraud having been played by the respondent / employee which amounts to a charge and is, therefore, required to be proved by following the due procedure laid down in law. As noted above, the employee has not challenged the said judgment and has rejected the offer of voluntary retirement put forth by the petitioner on the ground that he is willing to face an enquiry.

17. Unlike the case of the employee in the matter of this very petitioner Pratibha Niketan Education Society Vs. Ashok Sambhaji Dalpe and another [Writ Petition No. 12486 of 2015] wherein the fraudulent behaviour of the employee was writ large on the face of record, in the instant case I do not find any similar circumstances to draw any conclusion at this stage with regard to the purported fraud committed by the employee. I find it proper to allow the petitioner to comply with the direction of the School Tribunal in conducting a departmental enquiry as per Rules. Needless to state, the enquiry committee shall decide the charges levelled upon the employee by the petitioners, on their own merits.

18. In the cases of Shalini and Arun (supra), cases not involving fraud have been protected. The School Tribunal, in its wisdom has, therefore, protected the employee and at the same time has ensured that the petitioner would follow the due process of law in the event it desired to prove the charge of fraud against the employee.

19. As such, I do not find any reason to cause any interference in the directions issued by the School Tribunal in clauses 2 and 3, below paragraph No.59 of the impugned judgment. Needless to state, in the event the petitioner desires to conduct an enquiry and desires to place the respondent / employee under suspension pending disciplinary action, it is at liberty to take recourse to Rules 33, 36 and 37 of the the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. If an application for suspension is moved by the petitioner to the Education Officer, the said officer shall decide such an application on its own merits.

20. This petition is, therefore, disposed off with the above observations and Rule is discharged.

21. Pending Civil Application, if any, stands disposed off.

(RAVINDRA V. GHUGE, J.)

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