

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11778 OF 2015

Savita d/o Madhavrao Chavan
@ Smt.Savita w/o Anil Nagade,
Age-48 years, Occu-At Present Nil,
R/o C/o Anilkumar Ramrao Nagde,
East Balajinagar, Near Dal Mill,
Behind Sahyadri Hotel, Omerga,
Tq.Omerga, Dist.Osmanabad

-- PETITIONER

VERSUS

1. The President,
Shri Chhatrapati Shivaji Shikshan
Sanstha, Kanya High School,
Omerga, Tq.Omerga,
Dist.Osmanabad,

2. The Secretary,
Shri Chhatrapati Shivaji Shikshan
Sanstha, Kanya High School,
Omerga, Tq.Omerga,
Dist.Osmanabad,

3. Headmistress,
Shri Chhatrapati Shivaji Shikshan
Sanstha, Kanya High School,
Omerga, Tq.Omerga,
Dist.Osmanabad,

4. The Education Officer (Secondary),
Zilla Parishad, Osmanabad

-- RESPONDENTS

Mr.R.L.Kute h/f Mr.V.R.Dhorde, Advocate for the petitioner.
Respondent No.1 served.
Mr.V.B.Jagtap, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 16/11/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment dated 03/10/2015 delivered by the School Tribunal, Solapur, by which her Appeal No.346/1996 has been dismissed.

3. I have heard the learned advocates for the respective sides at length. Considering the order that I intend to pass, I am not required to advert to their entire submissions. Suffice it to say that there is no dispute that the petitioner had acquired her graduation degree in Science in 1990 with Chemistry being her principal subject and Biology and Zoology being subsidiary subjects. She was appointed on probation for one year by order dated 01/10/1991 as an untrained teacher. By a subsequent order, she was again appointed on probation for one year. These orders were under Rule 67.2 (b) of the Secondary Schools Code.

4. It is undisputed that the Deputy Director of Education accepted the application of the petitioner and informed the Principal of the Educational Society that she was permitted to acquire B.Ed.

qualifications through postal course, which is commonly known as postal B.Ed. It is equally undisputed that the petitioner acquired B.P.Ed. qualifications on 03/05/1992 and has acquired her B.Ed. qualifications through Post by communication dated 01/04/2006. The fact remains that the qualifications required for being a permanent teacher was a graduation degree in Education, which the petitioner did not possess prior to 01/04/2006. I am not required to deal with the issue that the petitioner required 13 years to complete her postal B.Ed.

5. The respondent/Management has contended that the petitioner was terminated by order dated 30/03/1996 which was given effect from 30/04/1996. This Court, by its judgment dated 04/04/2014 had partly allowed WP No.578/2001 and had remitted the appeal of the petitioner to the School Tribunal for reconsideration after it was revealed that she had approached the School Tribunal in 1996 on the basis of oral termination, when the respondent had taken a stand that the termination order dated 30/03/1996 given effect to from 30/04/1996, was not challenged by the petitioner before the Tribunal.

6. The issue is that the petitioner was continued on temporary basis though she was officially shown by the management to be on probation for two years. After completion of probation of 2 years, the Management was required to take a decision as to whether she should be continued

as a regular employee or whether her probation period needs to be extended. The Management has vehemently contended that having terminated the petitioner on 30/04/1996, there was no reason for the Management either to continue her in employment or to support her candidature for postal B.Ed. notwithstanding the fact that the Department of Education had permitted the petitioner to acquire postal B.Ed qualifications by the letter dated 21/12/1993.

7. The Management has come up with a defence that the petitioner was appointed against the S.T. Category by appointment order dated 11/06/1995 since the Institution was sanctioned 20% salary grants and was obliged to ensure that the reservation policy is fully implemented. She was, therefore, engaged as a temporary against ST category by appointment order dated 11/06/1995 which she has specifically accepted by executing an undertaking. Upon closing of the academic year on 30/04/1996, she was disengaged.

8. In the above backdrop, it is apparent that the respondent / Management made the petitioner believe that she was appointed on probation by the appointment order dated 01/10/1991. This was followed by another appointment order dated 05/07/1992 indicating that she was again on probation for one year. The law on probation is settled. A person on probation is being tested for his suitability for

being engaged on permanent basis on a permanent vacant post. As such, by creating a picture that the petitioner was engaged on probation for two years, the Management made the petitioner believe that she would be regularized in employment.

9. In contra distinction, the Management engaged her in 1995 against the S.T. category. Neither was any advertisement published, nor was the procedure for selection and appointment followed by the Management. Needless to state, the burden to resort to a proper selection process strictly in accordance with the rules lies on the Management since the whole process of selection is at the behest of the Management.

10. Notwithstanding the above, it cannot be ignored that the petitioner is out of employment for more than 20 years and there was no valid selection process resorted to by the Management. It also cannot be ignored that the petitioner was not possessing the requisite qualifications at the time of her appointment on probation. In this backdrop, though there can be no order of reinstatement with continuity, the Management can be penalized by grant of compensation u/s 11(2)(e) since the Management made the petitioner believe that she was being considered for regular appointment against the permanent vacant post by appointing her on probation for 2 years and yet having

continued her on temporary basis from the academic year 1991 till 30/04/1996.

11. In the light of the above, this petition is partly allowed only to the extent of directing the respondent/Management Nos.1 and 2 to pay compensation equal to the salary for 6 months u/s 11(2)(e) by considering the present salary payable to a teacher with whom the petitioner can be compared. Needless to state, the said amount of salary shall include pay and allowances as set out u/s 11(2)(e) and shall be paid to the petitioner within a period of 12 weeks from today, failing which the said amount shall carry interest @ 6% from the date of the judgment of the School Tribunal. As such, the impugned judgment of the School Tribunal stands modified in these terms.

12. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)