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THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.340 OF 2007
IN
WRIT PETITION NO.5507 OF 1997

Pramod Satuppa Oulkar,
Age; about 42 years,
Occupation : Service (Terminated),
R/o. Turkewadi, Taluka Chandgad,
District Kolhapur. ..Appellant.

V/s.

1. The Kini Karyat Shikshan Mandal,
Kowad, Taluka Chandgad,
District Kolhapur through its
Head Master.
2. The Head Master,
Shree Ram Vidyalaya,
Kowad, Taluka Chandgad,
District Kolhapur.
3. The Education Officer (Secondary),
Zilla Parishad, Kolhapur. ..Respondents.

Mr.Mahadeo B. Ghule for the appellant.

Mr.N.V. Bandivadekar with Mr.Sagar Mane for respondents.

**CORAM : V.M.KANADE AND
MRS.SWAPNA JOSHI, JJ.**

DATED : 22ND AUGUST, 2016

ORAL JUDGMENT (PER V.M.KANADE, J.)

1. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondents.

2. This Letters Patent Appeal is filed against the order of the learned Single Judge dated 16th August, 2007. By the said impugned judgment and order, the learned Single Judge has set aside the order passed by the School Tribunal.

3. The brief facts relevant for the purpose of deciding this LPA are as under:-

The appellant herein had applied for the post of Assistant Teacher in the respondent-school after an advertisement was issued in the newspaper calling for applications for the said posts. It is not in dispute that in the

said advertisement which was issued for the post of Assistant Teacher for the academic year 1992-93, it was mentioned that the post was reserved for the ST (Scheduled Tribe). The appellant, who admittedly belongs to an open category applied and appeared for the interview. Since no candidate belonging to either SC, ST or OBC was available, the appellant was appointed as Assistant Teacher for a purely temporary period for the academic year 1992-93. At the end of the academic year, this appointment was not continued. The respondent school again advertised for the post in the year 1993-94 and again it was mentioned in the advertisement that it is reserved for ST category candidate. In the said year also, only the petitioner appeared for the interview and person belonging to SC, ST or OBC did not apply. Services of the appellant were continued again for a period of one academic year i.e. for the year 1993-94. The appellant herein again made an application after an advertisement was issued for the third year i.e. for the year 1995-96. Again in the said advertisement, it was specifically mentioned that the post is reserved for the ST category candidate. Since no candidate from reserved category was available, the appellant who appeared for the interview was again appointed for a

temporary period of one academic year. After the end of the academic year, the appellant's services were automatically terminated and for the fourth year again an advertisement was issued in which similar terms and conditions were mentioned. The appellant was again appointed for the fourth consecutive year on purely temporary basis for one academic year. For the fifth year however, when a similar advertisement was issued for the post of Assistant Teacher, a reserved category candidate was available and accordingly, the said reserved category candidate was appointed.

4. Being aggrieved by the oral order of termination by the School Management, the appellant filed an appeal before the School Tribunal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('the Act' for short). The Tribunal came to the conclusion that the appointment of the appellant herein was on probation of two years and, therefore, his services could not have been terminated in view of section 3 read with section 5 of the said Act. The Tribunal came to the conclusion that the Management has not established that they had followed the roster and, therefore, the Tribunal came to the

conclusion that the services of the appellant could not have been terminated and the order of termination was set aside and the Tribunal directed the respondent-school to reinstate the appellant with back wages.

5. The respondent-School challenged the said order by filing a writ petition under Article 227 of the Constitution of India. The learned Single Judge was however pleased to set aside the order of reinstatement and allowed the writ petition filed by the Management. The learned Single Judge held that the appointment of the appellant was against the reserved category post and was purely temporary for one year and as such, it held that the appellant had no right to be considered as a permanent employee since there was no permanent vacancy. The learned Single Judge, therefore, set aside the order of the Tribunal and confirmed the termination of the appellant.

6. Being aggrieved by the order of the learned Single Judge, the appellant has preferred this Letters Patent Appeal.

7. The learned counsel appearing on behalf of the

appellant sought to invite our attention to the order of appointment which was issued by the School. He submitted that nowhere in the letter of appointment it was mentioned that the appointment was made against the reserved category post. Secondly, he submitted that the letter of appointment clearly mentions that the appellant was appointed on probation for a period of two years. He, therefore, submitted that section 3 read with section 5 sub-clauses (3) and (4) of the Act is applicable to the present case and the Tribunal has rightly observed that the appointment for specific term was on a clear vacancy and as such, the order ought to have been confirmed by the learned Single Judge. He invited our attention to the Division Bench judgment of this Court in the case of **Lalitha Thutpi V/s. C.B.Kharkhanis, Presiding Officer, School Tribunal Bombay and others** reported in **Maharashtra Education Cases, 1532**. He submitted that in the said case also, the advertisement mentioned that post was reserved for the reserved category candidate.

8. He then submitted that under The Maharashtra Emoloyees of Private Schools (Conditions of Service) Rules,

1981 ('the MEPS Rules' for short), the rules clearly contemplates that in the case of an employee who is terminated by giving oral directions, then such termination falls under the category of otherwise terminated.

9. On the other hand, Mr. Bandivadekar, the learned counsel appearing on behalf of the respondent-Management submitted that the appellant was aware that he was appointed on a reserved category post. He submitted that so far as the letter of appointment is concerned, it was in a prescribed format and his appointment was tick marked in the category and the appointment was purely on temporary post for a period of one year. He also invited our attention to the order of approval granted by the Deputy Director. He submitted that the letter of approval clearly shows that the order of approval was granted only for a period of one year and it mentions that the appointment is against the reserved category post. He invited our attention to rule 9(9)(a). He submitted that the rule clearly prescribes that an appointment against the reserved category post may be filled in temporarily for the period of one year in the case of open category candidate. He submitted that in the fifth year since

reserved category candidate was available, the appellant was not again reappointed for temporary period of one year. He, therefore, submitted that the termination was in accordance with the rule.

10. He also invited our attention to the Full Bench judgment of this Court in the case of **Ramkrishna Chauhan V/s. Seth D.M. High School and others** reported in **2013 (2) Mh. L.J. 713**. He invited our attention to various paragraphs of the said judgment. He submitted that the Full Bench of this Court had held that the Tribunal did not have any jurisdiction to refer to the appointment, as appointment made on probation. He submitted that the Full Bench judgment clearly mentions that the terms and conditions of the letter of appointment were binding on the employee.

11. After having heard both the learned counsel, we are of the view that the order of the learned Single Judge cannot be interfered with. It is not possible to accept the contention of the learned counsel for the appellant. The learned Single Judge has passed a reasoned order and has given cogent reasons why the order of the Tribunal was required to be set

aside.

12. We concur with the findings given by the learned Single Judge.

13. Rule 9(9)(a) of the Act is based on procedure in respect of reservation of post for reserved category candidate. The said Rule reads as under :-

“9(9)(a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes.”

14. Perusal of the said Rule clearly indicates that *inter se* change in respect of the reserved category candidate is available to the Management but that option is not available when an open category candidate is appointed against a reserved category post. There is no specific notification or condition for relaxation of the said condition so far as the Act and the Rules are concerned. We find that in the case of

Universities so far as appointment of a lecturer in University is concerned, after a period of five years, a person can apply for de-reservation of the post. However, unfortunately so far as schools are concerned, there is no such condition available for de-reservation. In the present case, the appellant did not complete even five years of his service and in the fifth year itself the Management could get a person from the reserved category. The relevant rule regarding reservation can be found in Sub-rule 7 of Rule 9, which reads as under:-

“9(7) The Management shall reserve 52 per cent of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely:-

(a)	Scheduled Castes	13 per cent
(b)	Scheduled Tribes	7 per cent
(c)	De-notified Tribes (A)	3 per cent
(d)	Nomadic Tribes (B)	2.5 per cent
(e)	Nomadic Tribes (C)	3 per cent
(f)	Nomadic Tribes (D)	2 per cent
(g)	Special Backward Category	2 per cent
(h)	Other Backward Classes	19 per cent
		52 per cent “

15. The percentage of reservation is clearly described under the Rule and the Management is duty bound to ensure that the reservation quota is duly fulfilled. If this is not done then the recognition of the school on that ground can be withdrawn by the Government.

16. The Full Bench of this Court in the case of *Ramkrishna Chauhan (supra)* has also clearly held that the terms and conditions of the letter of appointment are binding on the candidate and the Tribunal cannot presume that the appointment was made on probation. The contention of the learned counsel appearing on behalf of the appellant that section 3 read with section 5 is applicable is without any substance because the said section is in respect of appointment which is made on probation. Similarly, Rule 28 also will apply to the facts of the present case since the appointment is made in a reserved category and will, therefore, squarely fall under Rule 9(9)(a).

17. The learned counsel appearing on behalf of the appellant has relied on the judgment in the case of *Lalitha Thupti (supra)*.

18. In our view, the ratio of the said judgment will not apply to the facts of the present case. In the said case, advertisement mentions that if any SC and ST candidates are available, preference will be given to the said candidates and the Division Bench held that since open category candidate was available and the other candidates were not available and on completion of two years of probation, section 3 read with section 5 of the Act will apply. The ratio of this judgment will not apply to the facts of the present case.

19. Viewed from any angle, we do not see any infirmity in the findings recorded by the learned Single Judge.

20. In the result, the appeal is dismissed. There shall be no order as to costs.

(MRS.SWAPNA JOSHI, J.)

(V.M.KANADE, J.)