

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 735 OF 2016

Shikshan Prasarak Mandal & Anr. Petitioners

VERSUS

State of Maharashtra & Ors. Respondents

Mr.P.K.Hushing, a/w. Mr.V.K.Bodhare, i/b. Mr.A.M.Joshi for the Petitioners.

Mr.A.R.Metkari, A.G.P. for Respondent Nos. 1 to 3/State.

Mr.Rakesh Saroj for Respondent no.4

CORAM : R.D. DHANUKA, J.

DATED : 22nd MARCH, 2016

P.C.

By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order and judgment dated 15th October, 2015 allowing the appeal filed by the respondent no.4 under section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 challenging the termination of the service of the respondent no.4 dated 31st October, 2013. By the impugned order and judgment, school tribunal has declared the impugned termination order dated 31st October, 2013 as void and has quashed and set aside the same. The petitioners herein is directed to reinstate the respondent no.4 in service with full back wages and consequential benefits and also to pay compensatory cost of Rs.5,000/- to the respondent no.4 (original appellant) within one month from the date of the judgment.

2. It is the case of the petitioners that the petitioners had invited applications for SC/ST/VJNT category for the post of the teachers in English and Hindi in their school and issued an advertisement in the newspaper 'Sakal'. Several candidates

applied for the said post pursuant to the said advertisement issued by the petitioners including respondent no.4. It is the case of the petitioners that the respondent no.4 gave an assurance to the petitioners during her interview that she would produce certificate certifying that she belonged to schedule caste within a short time and accordingly she was given an appointment order for the post of assistant teacher in Hindi based on such assurance. Sometime in the month of October 1998, the respondent no.4 produced a certificate showing that she belonged to schedule caste.

3. On 19th March, 1999 the Education Officer addressed a letter to the petitioners that they should forward the proposal in respect of respondent no.4 as the backward class in view of a complaint made by the backward class union.

4. On 18th May, 2013, the Government of Maharashtra issued a resolution directing all the managements to ensure that the employees serving with them and claiming the benefits of reservation should get their caste certificate validated from the scrutiny committee and produce such valid certificate within a particular time.

5. It is the case of the petitioners that pursuant to the said resolution passed by the State of Maharashtra, respondent no.4 appeared before the scrutiny committee and produced various documents. The scrutiny committee passed an order on 24th October, 2013 directing the respondent no.4 to return the caste validity certificate. According to the petitioners, the respondent no.4 has returned the said caste validity certificate. On 28th October, 2013, the scrutiny committee however addressed a letter requesting that the respondent no.4 was entitled to continue in service since respondent no.4 was appointed prior to the date of Government resolution of 1999.

6. On 29th October, 2013, the petitioners issued an order of termination to the

respondent no.4 on the ground that she was appointed as SC category employee notwithstanding the fact that she belonged to an open category. This order of termination was impugned by the respondent no.4 by filing an appeal (36 of 2013) before the school tribunal. The school tribunal passed an order on 15th October, 2015 allowing the appeal filed by the respondent no.4 and directed the management to reinstate respondent no.4 with full backwages and various other benefits.

7. Learned counsel for the petitioners (management) invited my attention to the various documents annexed to the writ petition. He submits that admittedly, the post of assistant teacher advertised by the petitioners was meant for reserved category in response to which the respondent no.4 had applied for such post. He submits that the respondent no.4 had assured the petitioners that she would produce the necessary certificate showing her status as schedule caste category. It is submitted that in view of the circular issued by the Government in the year 2013, the petitioners were required to direct the respondent no.4 to appear before the scrutiny committee and to obtain certificate. He submits that since the respondent no.4 admittedly appeared before the scrutiny committee and it was found that she did not have valid certificate of SC category, her certificate was returned. He submits that since the respondent no.4 belonged to open category, at the threshold she could not have represented herself as if belong to reserved category. He submits that in view of the misrepresentation made by the respondent no.4 that she belonged to reserved category of scheduled caste, the petitioners were justifying in terminating her services on that ground.

8. Learned counsel for the petitioners invited my attention to some of the documents which appeared to have been issued by the Education Officer and based

on such documents it is submitted that the appointment of the respondent no.4 was made in the reserved category. He submits that though this documents were produced before the school tribunal, the school tribunal has not considered those documents. He submits that various findings recorded by the school tribunal are totally erroneous and contrary to the documents produced by the petitioners.

9. Learned counsel for the respondent no.4 on the other hand invited my attention to the resolution passed by the petitioners which is annexed at page 37 of the writ petition dated 6th August, 1998. He submits that pursuant to the advertisement issued by the petitioners on 1st August, 1998, 11 candidates from open category including the respondent no.4 had applied for the said post. Out of those 11 candidates from open category, five candidates were appointed including respondent no.4 w.e.f. 6th August, 1998.

10. It is submitted by the learned counsel that since husband of the respondent no.4 belonged to the reserved category, in view of the threatening letter addressed by the petitioners to get clearance from the scrutiny committee otherwise her service would be terminated, respondent no.4 was compelled to appear before the scrutiny committee though her appointment was not made by the petitioners in the reserved category but was made in the open category. He submits that the resolution passed by the Government on 18th May, 2013 directing the management to ensure that the employees serving with them and claiming the benefits of reservation should get their caste certificate validated from the scrutiny committee and to produce such valid certificate within a particular time was not applicable to the appointment of the respondent no.4 made in open category. It is submitted that for last 15 years, the petitioners never raised any objection in respect of the appointment of the respondent no.4 made in the open category. The respondent

no.4 has meritorious record of the service.

11. Learned counsel for the respondent no.4 also invited my attention to the approval letter annexed to the affidavit in reply at page 197. He submits that even the said approval letter would clearly indicate that the appointment of the respondent no.4 was made in the vacant post.

12. My attention is also invited by the learned counsel to the affidavit filed by the Education Officer before school tribunal which is annexed at Ex.III to the affidavit in reply filed by the respondent no.4. He submits that the Education Officer in the said affidavit has admitted that the appointment of the respondent no.4 was made in the school run by the petitioner no.1 w.e.f. 6th August, 1998 from the open category. The respondent no.4 had granted approval in respect of her appointment w.e.f. 6th August, 1998 in clear vacancy. He submits that the Education Officer had admitted that since the appointment of the respondent no.4 was made in the open category, there was no connection with her caste certificate of the SC category.

13. Learned counsel for the respondent no.4 also invited my attention to the various findings recorded by the school tribunal and would submit that the resolution which was originally passed by the petitioners to the effect that the respondent no.4 was appointed to the post of the teacher in the open category was subsequently sought to be tampered with. He submits that the findings of fact recorded by the school tribunal cannot be interfered with this court as the same are not perverse.

14. Learned AGP appearing for respondent nos. 1, 2 and 3 invited my attention

to the affidavit in reply filed before the school tribunal by the respondent nos. 1 to 3 and submits that the school tribunal has rightly considered the said affidavit while allowing the appeal filed by the respondent no.4.

15. A perusal of the record indicates that though the advertisement was issued by the petitioners for the post of assistant teacher under reserved category, candidates from the open category had applied for the said post. The resolution admittedly passed by the petitioners would clearly indicate that though the said advertisement was for reserved category, no candidates from the reserved category had applied for the said post. 11 candidates from the open category had applied for the said post. Out of those 11 candidates from open category, the petitioners had appointed five candidates including the respondent no.4 from the open category for the said posts. A perusal of the approval granted by the respondent nos. 1, 2 and 3 which is annexed to the affidavit in reply filed by the respondent no.4 also clearly indicates that the appointment of the respondent no.4 was made in the vacant post in the school run and managed by the petitioner no.1.

16. A perusal of the affidavit in reply filed by the respondent nos. 1 to 3 before the school tribunal which has been considered by the school tribunal also clearly indicate that the respondent no.4 had been appointed as assistant teacher in the petitioner no.2 school w.e.f. 6th August, 1998 from the open category and the Education Officer had granted approval to her clear vacancy. The Education Officer has stated in the affidavit that he had never given instructions to the petitioners to cancel the appointment of the respondent no.4. He had also not received any complaint about the appointment of the respondent no.4 from the petitioners till the date of filing the said affidavit. It is stated in the said affidavit that the scrutiny committee had clearly mentioned in the letter and corrected their

mistake. The Education Officer has further stated that since the appointment of the respondent no.4 was from open category, there was no connection with her caste i.e. SC category and thus the order of termination of the respondent no.4 by the petitioners on the ground of caste validity had no base.

17. A perusal of the order passed by the school tribunal on this issue clearly indicates that the school tribunal has recorded the findings after considering various documents on record and also the affidavit in reply filed by the respondent nos. 1 to 3 that the appointment of the respondent no.4 was from the open category. It is rightly held that the Government circular dated 18th May, 2013 about the caste validity was not applicable in this case.

18. A perusal of the resolution passed by the petitioners clearly indicates that the appointment of the respondent no.4 alongwith four other candidates was made in the open category. Though the post was advertised for reserved category, since there was no candidates available for the reserved category, the petitioners had filled up those posts by appointing the candidates from the open category including the respondent no.4.

19. In my view, there is substance in the submissions made by the learned counsel for the respondent no.4 that though the respondent no.4 was appointed in the open category, the respondent no.4 was made to appear before the scrutiny committee for scrutinizing her caste certificate in view of the threats given by the petitioners as is apparent from the correspondence placed on record. The respondent nos. 1 to 3 who had approved the appointment of the respondent no.4 has categorically admitted in the affidavit in reply that the appointment of the respondent no.4 was in the open category and was approved by the respondent nos.

1 to 3 in the vacant post. In my view in these circumstances, the school tribunal was right in holding that the appointment of the respondent no.4 was in open category and in a vacant post and thus the termination of her service by the petitioners on the ground that the respondent no.4 was appointed in the reserved category and actually she belong to open category is illegal.

20. In my view since the respondent no.4 was appointed in the open category, the petitioners could not have insisted the respondent no.4 to comply with the Government circular dated 18th May, 2013 about caste verification. The findings rendered by the school tribunal that such Government circular dated 18th May, 2013 was not applicable in this case is thus correct and does not suffer from any infirmity.

21. A perusal of the order passed by the school tribunal further indicates that the petitioners had made an attempt to tamper with the earlier resolution by which it was resolved that the appointment of the respondent no.4 was in the open category.

22. A perusal of the order passed by the school tribunal clearly indicates that the school tribunal has considered all the documents, the provisions of law and has considered the affidavit filed by the petitioner nos. 1 to 3 and has recorded various findings of fact on various issues framed by the school tribunal which findings of fact in my view are not perverse and thus cannot be interfered with by this court under Articles 226 and 227 of the Constitution of India.

23. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]