

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3254 OF 2014

Sarvodaya Shikshan Sanstha Navvasahat,
Soygaon And Ors ...Petitioners

Versus

Smt. Anita Aatmaram Dhangar
And Ors ...Respondents

WITH

Writ Petition NO. 4559 OF 2014

Sarvodaya Shikshan Sanstha Navvasahat,
Soygaon And Ors ...Petitioners

Versus

Shri. Arun Thanhaji Kuwar
And Ors ...Respondents

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Mr.R.M. Haridas a/w. M.M. Sathaye, Advocate for the Petitioners
in both Writ Petitions.

Mr.Anilkumar K. Patil, Advocate for Respondent No.1 in both
Writ Petitions.

Mr. A.R. Metkari, A.G.P. for respondents No.2 and 3-State in
both Writ Petitions.

Ms.Yogita Deshmukh, Advocate for Respondents No.4 & 5 in
both Writ Petitions.

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CORAM : R. G. KETKAR, J.

DATE : 13th JUNE, 2017

P.C.

1. Heard Mr.R.M. Haridas, learned counsel for the
petitioners, Mr.Anilkumar Patil, learned Counsel for respondent

No.1, Mr. A.R. Metkari, learned A.G.P. for respondents No.2 and 3-State and Ms.Yogita Deshmukh, learned counsel for respondents No.4 and 5 in both the Petitions, at length.

2. Writ Petition No.3254/2014 takes exception to the judgment and order dated 26.11.2013 passed by the learned Presiding Officer, School Tribunal, Nashik Division, Nashik (for short, 'Tribunal') in Appeal No.17/2011 instituted by the first respondent challenging the termination order dated 18.2.2011. Writ Petition No.4559/2014 takes exception to the judgment and order dated 26.11.2013 passed by the Tribunal in Appeal No.16/2011 preferred by respondent No.1 challenging the termination letter dated 18.2.2011. By these orders, the Tribunal allowed the appeals No.16/2011 & 17/2011 preferred by respondent No.1 in both the petitions and set aside the termination orders dated 18.2.2011. The Tribunal directed the Management to appoint first respondent on the original post along with back-wages with continuity of service and all other benefits amongst other directions.

3. As the common questions of law and facts arise in these petitions, same can conveniently be disposed of by this

common order. For appreciating the controversy involved in these Petitions, the facts in Writ Petition No.4559/2014 are taken into consideration.

4. It is not in dispute that two posts of Peon are sanctioned in Jagruti Madhyamik Vidyalaya. Out of that two posts, one post is for reserved category and one post is for open category. On 25.5.2002, the School Committee of petitioner No.1 Sarvodaya Shikshan Sanstha passed resolution No.3 for appointment of respondent No.1 on temporary basis for academic year 2002-03. Resolution also recited that after considering the performance of first respondent during that period, decision whether to continue in the services or not will be taken. On the basis of this resolution, appointment letter dated 1.6.2002 was issued to the first respondent. Respondent No.1 joined the duties on the post of Peon on 1.6.2002. By letter dated 18.2.2011, the services of the first respondent were terminated.

5. In support of these Petitions, Mr. Haridas submitted that before appointing the first respondent, no advertisement was issued. No interviews were held. In short he submitted that

without following procedure for appointment of non-teaching staff, the first respondent was appointed. In fact after expiry of academic year 2002-03, his services came to an end. He submitted that though in paragraph-8 of the written statement it was specifically contended that the appointment of the first respondent was not by following due process of law, the Tribunal did not deal with this contention at all. It is, therefore, necessary to set aside the impugned order and remand the matter to the Tribunal for deciding it afresh. He further submitted that in the place of respondent No.1 in both the petitions, the petitioners have appointed respondent No.4 in both the petitions by following due process of law, namely, by issuing advertisements and after taking interviews. If the impugned orders are upheld, it will cause grave prejudice and hardship to the fourth respondent who is innocent. Respondent No.1, in both the petitions, though were aware of appointments of the fourth respondent in both the petitions, did not implead them before the Tribunal.

6. Mr. Haridas further relied upon the decision of this Court in the case of ***President, Late Shri Ramchandra Patil***

***Sikshan Sanstha, Kunikonur and others v. Haidarali
Mahmadhanif Inamdar and another, 2008(4) Mh.L.J. 159***

to contend that a person who has not gone through the regular process of selection against the permanent vacant post cannot have a claim of permanency only on the ground that he had worked for two years or more in a particular school.

7. Ms. Deshmukh appearing for the fourth respondent in both the petitions submitted that the petitioners, after following due process of law had appointed respondent No.4 in both the petitions in the place of the first respondent after termination of their services. Respondent No.1 in both the petitions were aware of appointments of the fourth respondent and still they did not implead them in both the petitions as party respondent in Appeals. She submitted that as fourth respondent in both the petitions are validly appointed , their appointments should not be disturbed.

8. On the other hand, Mr. Patil supported the impugned orders. He submitted that resolution No.3 was passed by the School Committee. A perusal of the resolution at Exhibit-B (page-20) shows that it is signed by President and Secretary of

petitioner No.1. Appointment letter dated 1.6.2002 at Exhibit-B (page-21) was also signed by the President and Secretary of the first petitioner. Termination letter dated 18.2.2011 was signed by the President of the first petitioner. He invited my attention to reply filed in Appeals which was signed by the President and Secretary of the first petitioner. Insofar as the President is concerned, he submitted that comparison of signatures on (1) the resolution dated 25.5.2002 of the School Committee, (2) the appointment letter dated 1.6.2002, and (3) the termination letter dated 18.2.2011 with signature on the reply dated 23.6.2011 filed opposing the Appeals shows that the President was the same gentleman who appointed the first respondent in both the petitions. In short he submitted that the contention that the appointments of the first respondent were not made by following due process of law is not available to the self-same President. He also relied upon the decision of this Court in ***Jagdamba Education Society, Nagpur v. Rajendra Baburao Golhar and others, 2009(2) Mh.L.J. 522*** and in particular paragraphs-8, 13, 18 and 19. The learned Single Judge dealt with the decision of Division Bench in *Priyadarshini Education Trust and others v. Ratis (Rafia) Bano d/o. Abdul Rasheed and others, 2007(6)*

Mh.L.J. 667 and observed that the observations made by the Division Bench would be applicable to the appointment made by School getting grant-in-aid and cannot be applied strictly to the schools which are not getting any grants from the Government. The observations were made in the context of Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'Rules'). Mr. Patil submitted that the Tribunal has considered the documentary evidence and came to the conclusion that right from the date of appointment in the year 2002 onwards, respondent No.1, in both the petitions, are continually working till date of termination. He submitted that the Tribunal held that the first respondent, in both the petitions, are permanent employees and consequently without holding an enquiry against them the petitioners could not have terminated their services. He further submitted that the first respondent, in both the petitions, were terminated on 18.2.2011 and the fourth respondent, in both the petitions, were appointed on 30.6.2011. It was within the special knowledge of the petitioner Management. The petitioners however did not disclose said fact before the Tribunal. No fault can be found with respondent No.1 in not impleading respondent No.4 in the

appeals filed by them. For all these reasons, he submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is evident from record and the said fact is also not disputed by the parties that two posts are sanctioned in the school run by the petitioners. Out of these two posts, one post is for 'reserved category' and one is for 'open category'. A perusal of resolution dated 25.5.2002 passed by the School Committee shows that the first respondent was appointed on temporary basis for academic year 2002-03. The resolution further recited that after considering the performance of the first respondent during this period, decision whether to continue the first respondent in service or not will be taken. A perusal of the appointment letter dated 1.6.2002 does not indicate that his appointment was made on temporary basis for a particular period. In fact a perusal of the appointment letter does not indicate that the petitioners bothered to fill-in clause (2) thereof. The documents, namely, resolution dated 25.5.2002 and the appointment order dated 1.6.2002 as also the termination order dated 18.2.2011 are signed by the

President. Even the reply filed by the petitioners is also signed by the self-same President. During the course of hearing, I repeatedly called upon Mr. Haridas that as to why no procedure was followed before appointing the first respondent as the President was the same gentleman at the time of appointment of the first respondent as also at the time of terminating their services. The only answer Mr. Haridas could give was that the petitioners made mistake in appointing the first respondent without issuing advertisement and without conducting interviews.

10. After considering the material on record, the Tribunal has recorded a finding of fact that the first respondent in the both the petitions were continuously working from 2002 till the termination of their services on 18.2.2011. The Tribunal also recorded a finding that the first respondent is a permanent employee. The findings to that effect are not seriously disputed. Even otherwise I do not find any good reason to take a different view as regards the status of the first respondent as permanent employee. Section 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'Act') lays down terms and conditions of service of employees of

private schools. Sub-section (1) thereof lays down that subject to the provisions of this section, the State Government may make rules providing **for the minimum qualifications for recruitment (including its procedure)**, duties, pay, allowances, post-retirement and other benefits, **and other conditions of service of employees of private schools.**

(emphasis supplied)

11. In exercise of the powers conferred by sub-sections (1) and (2) of Section 16 of the Act and of all other powers enabling it in that behalf, the State of Maharashtra has made rules. Rule 9 deals with appoint of staff. Sub-rule (3) thereof provides that unless otherwise provided in these Rules for every appointment to be made in a school, for a teaching or a non-teaching post, the candidates eligible for appointment and desirous of applying for such post shall make an application in writing giving full details regarding name, address, date of birth, educational and professional qualifications, experience etc.. attaching true copies of the original certificates. Sub-rule (5) thereof provides for issuing appointment order in the Form in Schedule "D". Sub-rule (6) requires every employee to undergo medical

examination by a registered medical practitioner within three months of his appointment. A perusal of Rule 9 of the Rules strictly does not indicate the procedure for issuing advertisement as also holding interviews for appointments of teaching and non-teaching staff.

12. I am supported in taking this view by the decision of learned Single Judge of this Court in **Jagdamba Education Society** (supra). In paragraph-13, Section 5 of the Act and Rule 9 of the Rules was considered and the learned Single Judge observed that, "It is material to note that there is no specific provision in Rule 9 or any other Rule to issue an advertisement of the vacancies available for the open categories." In paragraph-18, the learned Single Judge considered the decision of Division Bench of this Court in **Priyadarshani Education Trust** (supra) and the decision of Apex Court in **Secretary, State of Karnataka vs. Umadevi, 2006(4) SCC 1** and observed that, "From these observations, it should be clear that the Division Bench gave much emphasis on the procedure to be adopted for the purpose of selection and recruitment because the School involved in the matter was a grant-in-aid school and

the school was getting grant-in-aid from the Government and, therefore, it was bound to make selection after following the due procedure.” In paragraph-19, the learned Single Judge observed that, “In my considered opinion, the observations made by the Division Bench will be applicable to appointment made by school getting grant-in-aid and cannot be applied strictly to the schools which are not getting any grants from the Government.”

13. Coming back to the provisions of the Rules, Rule 28 provides for removal or termination of service. For the purpose of that Rule, misconduct includes (1) breach of the terms and conditions of service laid down by or under the Rules, (2) violation of the Code of Conduct, and (3) any other act of similar nature. Rule 36 lays down that if an employee is allegedly found to be guilty on any of the grounds specified in sub-rule (5) of Rule 28 and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Under Rule 37 the procedure for conducting inquiry is laid down. It is not in dispute that in the present case no inquiry was held against the first respondent in both the petitions. If at all the petitioners were of the view that respondent No.1 in both the petitions were not appointed by following due process of law,

it was open for them to conduct inquiry as such act also clearly falls in the 'misconduct' of the management. No such inquiry was conducted and the services of the first respondent in both the petitions were terminated on 18.2.2011.

14. In view thereof, I do not find that the Tribunal committed any error in allowing the Appeals. Mr. Haridas and Ms. Deshmukh submitted that respondent No.1 did not implead the fourth respondent in the Appeals preferred by them. It is evident that the services of the first respondent were terminated on 18.2.2011 and the fourth respondent in both the petitions were appointed on 30.6.2011. The petitioner Management ought to have pointed out this fact before the Tribunal. A perusal of the reply filed in the Appeals does not remotely indicate that the petitioners have brought this fact to the notice of the Tribunal and prayed for impleadment of respondent No.4 in the appeals. In my opinion it is not open for the petitioners now to contend that respondent No.1 ought to have impleaded respondent No.4 in both the appeals. This is creation of the petitioners and they cannot take advantage of their own wrong. Hence, the Petitions fail and the same are dismissed.

15. At this stage Mr. Haridas orally applies for stay of this order for a period of eight weeks from today. He assures that the petitioners will not apply for further extension of interim order. In view thereof, notwithstanding dismissal of the Petitions, this order shall remain stayed for a period of eight weeks from today with an express understanding that no further extension will be sought and granted and during the period of eight weeks from today the petitioner shall deposit entire arrears of wages of the first respondent in both the petitions, before the Tribunal under intimation in writing to the Advocate for the first respondent in both the petitions. It is made clear that in case the arrears of wages of the first respondent in both the petitions are not deposited within eight weeks from today, interim order shall stand vacated without further reference to the Court. Order accordingly.

(R. G. KETKAR, J.)