

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 4849 OF 2016

Jyotna Rumaji Gajbhiye

...Petitioner

Versus

The Chairman, People's Education Society
And Ors.

...Respondents

....

Mr.Atul Mahajan a/w. Latish Gaibhiye, Advocate for the
Petitioner.

Mr. Prakash Hartalkar a/w. Tejas Hartalkar, Advocate for
Respondents No.1 and 2.

Mr.J.A. Madane, Advocate for Respondent No.3.

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CORAM : R. G. KETKAR, J.

DATE : 04th JULY, 2017

P.C.

1. Heard Mr.Atul Mahajan, learned counsel for the
petitioner, Mr. Prakash Hartalkar, learned Counsel for
respondents No.1 and 2 and Mr.J.A. Madane, learned Counsel
for respondent No.3, at length.

2. By this Petition under Articles 226 and 227 of the
Constitution of India, the petitioner has challenged the
judgment and order dated 27.11.2015 passed by the learned

Presiding Officer, School Tribunal, Pune (for short, 'Tribunal') in Appeal No.31/2014. By that order, the Tribunal dismissed the appeal preferred by the petitioner under Section 9 of the Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'Act') challenging the termination order dated 18.12.2012 passed by respondents No.1 and 2, hereinafter referred to as the 'Management'.

3. The petitioner came with the case that being qualified as M.Com. M.Phil.(Commerce) and M.A. Economics belonging to S.C. Category was appointed on full time basis in Management & Salesmanship of Minimum Competency vocational course (for short, 'course') under 30% woman reservation. After following due process of law, the Management had appointed her as a full time instructor against open category. She was appointed on 21.9.1995. Her appointment was against a clear and permanent vacancy. On 17.5.1996, the Management issued advertisement for the post of Instructor from open category. She applied for that post and once again she was selected. The Management suppressed pendency of appeal filed by one Shri Chavan. Respondent No.3 Deputy Director of Vocational Education and Training (for short, 'Deputy Director') gave approval to her post

for the year 1996-97. The Management stopped her salary from 20.6.1997 till 20.4.1998. The Management did not give her continuation for the year 1998-99. On enquiry by her, the Management informed the petitioner that Shri Chavan had filed Appeal No.13/1995 before the Tribunal and that she was assured that she will be confirmed and will be paid salary after the appeal is disposed of by the Tribunal. By telegrams dated 9.2.1999 and 12.2.1999 she was asked to hand over the charge of Rector which she was holding from 21.9.1995 to 20.4.1998. Behind her back, the Management compromised the matter pending before the Tribunal with Shri Chavan. Shri Chavan was appointed in 1999 on her post and no specific order of termination was issued. The petitioner, therefore, instituted Appeal No.17/1999 before the Tribunal. By order dated 23.1.2003, the Tribunal allowed the appeal and ordered reinstatement with full back-wages.

4. The Management challenged that order by instituting W.P. No.1681/2003. On 15.10.2010, this Court allowed the Writ Petition. The petitioner preferred Letters Patent Appeal No.335/2011. During pendency of that L.P.A. the dispute was settled between the parties out of the Court and L.P.A. was

withdrawn. The Management had agreed that she will be appointed on the post of Lecturer, Office Management and Banking in the Bifocal Course w.e.f. 18.10.2011. L.P.A. was disposed of in terms of the minutes of the order.

5. Respondent No.3 Deputy Director rejected the proposal for granting approval vide order dated 7.12.2012. Deputy Director never objected the compromise and also did not submit that the compromise between the petitioner and the Management was not acceptable. In other words, the Deputy Director has consented and acquiesced the compromise. Despite that the Management terminated her services vide order dated 18.12.2012 and, therefore, she filed Contempt Petition. This Court disposed of Contempt Petition by directing the petitioner to adopt appropriate remedy. She, therefore, preferred appeal before the Tribunal which was dismissed.

6. Mr. Mahajan submitted that the Tribunal committed serious error in holding that the compromise is not binding on the Deputy Director. He submitted that the Management had misled the petitioner in entering into compromise. He, therefore, submitted that the petition requires consideration.

7. Mr. Hartalkar appearing on behalf of the Management submitted that the Management did not mislead this Court while disposing the L.P.A. in terms of the minutes of the order.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-17 of the impugned order, the Tribunal noted that the appellant was appointed as Instructor by appointment order dated 21.9.1995. Appeal No.137/1995 filed by Shri Chavan was pending before the Tribunal. It is the case of the petitioner that the Management did not disclose pendency of the appeal preferred by Shri Chavan. Shri Chavan succeeded upto this Court and was appointed in the place of the petitioner. The petitioner preferred L.P.A. before this Court. A perusal of minutes of the order and in particular clause (1) thereof shows that the appellant therein (the petitioner herein) was appointed on the post of Lecturer, Office Management and Banking in the Bifocal Course w.e.f. 18.10.2011. The moot question is whether the Management could have offered and the petitioner could have accepted appointment on the post of Lecturer without following due process of law for selection on the post of Lecturer. It is relevant

to note that in paragraph-17 the Tribunal noted that respondent No.3 Deputy Director was not party to the compromise. In fact respondent No.3 though was impleaded as a party, was later on deleted in the minutes of the order. In other words, Deputy Director was deleted as a party in the minutes of order. There is, therefore, no question of his objecting to the minutes of the order. In my opinion, the Management after Shri Chavan succeeding in the Writ Petition instituted in this Court and was appointed in the place of petitioner, conveniently offered the petitioner appointment on the post of Lecturer and the petitioner also readily accepted said offer and jointly submitted minutes of the order before this Court. In my opinion this is nothing short of misrepresenting facts and misleading this Court while disposing L.P.A. in terms of minutes of the order on 17.10.2011. Neither the learned Counsel for the petitioner nor the learned Counsel for the Management could justify appointment of the petitioner on the post of Lecturer in terms of the minutes of the order. It is settled position of law that for appointment on the post of permanent vacant post, the Management has to follow the procedure laid down under Section 5 of the Act read with Rule 9 of the Maharashtra Employees of Private

School Rules,1981 (for short, 'Rules'). The petitioner and the Management could not have filed minutes of order for appointment of the petitioner on the post of Lecturer which was clearly in the teeth of the procedure laid down under the provisions of the Act and Rules. In view thereof as also for the reasons recorded in paragraphs-20, 21, 22 and 23 of the impugned order, no fault can be found with the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)