

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1456 OF 2016

Pramod Kashinath Bhosale ... Petitioner
Vs.
The Secretary, Ahilya Shikshan Prasarak Mandal
and others ... Respondents

Mr. Rajaram V. Bansode for Petitioner.
Mr. Dilip Bodake for Respondent No.1
Mr. Niranjan P. Shimpi for Respondent No.2.
Ms Jyoti Jadhav, AGP for Respondents No.3 and 4.

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2017

P.C. :

Heard Mr. Bansode, learned Counsel for petitioner, Mr. Shimpi, learned Counsel for respondents No.1 and 2, Ms Jadhav, learned AGP for respondents No.3 and 4 and Mr. Bodake, learned Counsel for Ramchandra N. Keskar at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'appellant', has challenged the judgment and order dated 18.12.2014 passed by the learned Presiding Officer, School Tribunal, Solapur (for short 'Tribunal') in Appeal No.61 of 2012. By that order, the Tribunal dismissed the appeal preferred by the appellant under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act') against the order of termination dated 15.10.2012.

3. Appellant had instituted appeal inter alia contending that he is holding educational qualification M.A.B.Ed. He was appointed on 15.06.2003. After completion of two years, he was appointed as a

permanent teacher on 09.06.2005. Without issuing any notice or memo, his services were terminated on 15.10.2012, which is illegal. Appellant, therefore, filed appeal challenging the termination order dated 15.10.2012.

4. Respondents No.1 and 2, hereinafter referred to as 'management', filed written statement inter alia contending that appellant was never appointed as an assistant teacher. There is no relationship of employer-employee between the parties and hence there is no question of termination of his services. Management contended that there was dispute between Ramchandra N. Keskar, the then Secretary of the respondent No.1 Trust and other trustees. Taking undue advantage of the dispute, appellate prepared false and bogus documents with the help of that Secretary. Secretary was expelled by passing resolution. All the documents filed by the appellant are bogus.

5. Mr. Ramchandra N. Keskar also filed affidavit dated 05.02.2014 in the appeal inter alia contending that he is Founder Secretary of Ahilya Shikshan Prasarak Mandal as also Secretary of newly elected management committee of the said Trust. He stated that he had issued appointment order dated 05.06.2003 and permanent appointment order dated 09.06.2005 to the appellant. The appointment orders were issued in pursuance of the decisions taken by the Managing Committee. There was difference between the Chairman and the Secretary of the Trust on the ground that Chairman had appointed his son Tanaji Maruti Keskar as an Assistant Teacher in the school without following due process who was not qualified in the year 2007. The Chairman thereafter appointed his son as Head Master in the school. The Chairman also illegally terminated services of two teachers without consulting the Managing Committee. As he disagreed with the course of action adopted by the

President, the President is removed and to that effect, change report is submitted to the Assistant Charity Commissioner, Solapur. He further submitted that appellant was legally appointed.

6. By the impugned order, the Tribunal dismissed the appeal principally on the ground that appellant was appointed without following due process of law. In paragraphs 6 and 7, the Tribunal also recorded a finding that the documents produced by the appellant are not genuine / authentic documents. These documents do not establish that appellant was appointed on permanent vacant post by following procedure laid down in Section 5 of the Act and Rule 9 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules').

7. In support of this Petition, Mr. Bansode strenuously contended that appellant is working in the school for more than 10 years. He has invited my attention to the appointment order dated 05.06.2003, which is issued in Schedule 'D' under Rule 9(5). He has also taken me through the affidavit dated 05.02.2014 filed by Ramchandra N. Keskar. He submitted that being an employee, he is not in possession of record showing that the management has followed due process of law, namely issuance of advertisement, holding of interview in terms of Section 5 read with Rule 9 of the Rules.

8. Mr. Bansode also relied upon the decision of this Court (Coram : R. V. Ghuge, J.) in **Vilas Jijabrao Chavan Vs. Grushneshwar Shikshan Sanstha**, Writ Petition No.1593 of 2002 decided on 25.08.2016.

9. Mr. Bodake has also supported the appellant. He has invited my attention to the affidavit made by Ramchandra N. Keskar in the present

Petition on 18.06.2017, and in particular paragraph 7 thereof. In paragraph 7, it is stated that office of the Trust was in the house of the then Chairman Maruti Shivram Keskar. The record and proceeding of the Trust are lying in the cupboards of his house. Respondent No.2, Headmaster is son of the then Chairman and he may be directed to produce the entire record and proceeding in relation to the Trust.

10. Mr. Bodake has also relied upon the decision of this Court in the case of *Jagdamba Education Society Vs. Rajendra Baburao Golhar*, **2009 (2) ALL MR 613**, and in particular paragraphs 19 to 22. The learned Single Judge referred to decision of the Division Bench in *Priyadarshini Education Trust Vs. Ratis (Rafia) Bano*, **2007 (6) Mh.L.J. 667** in paragraphs 18 and 19. Mr. Bodake relied upon the following observations made in paragraph 19:

“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. As per the provisions of Section 5 read with Rule 9, the Management was bound to fill in the permanent vacancy as soon as possible by appointment of qualified person by following necessary procedure. However, in spite of the fact that the vacancy was available for long time and at least for six years, the Management did not take steps to make appointment against the permanent vacancy and issued the orders year to year and thus kept hanging sword of insecurity of service on the head of the employee. If the observations made by the Division Bench in respect of the grant-in-aid school are held to be applicable to the non aided schools, it will amount to rewarding the Management for non compliance of the rules and for making of appointments of qualified and needy persons year to year for ulterior motives and their own benefits.”

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Tribunal has held that the appellant was not appointed by following due process of law as contemplated by Section 5

read with Rule 9 of the Rules. Section 5(1) and (2) as also Rule 9(2), (3) and (5) of the Rules read thus,

5. Certain obligations of Management of private schools :
 (1) The Management shall as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy :

Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.

(2) Every person appointed to fill a permanent vacancy except shikshan sevak shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed :

Provided that, every person appointed as shikshan sevak shall be on probation for a period of three years.

9. Appointment of staff. - (2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee :

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.

(3) 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. It shall not be necessary for candidates other than those belonging to the various sections of backward communities for whom posts are reserved under sub-rule (7) to state their castes in their

applications.

(5) A letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having received the appointment order shall be obtained from the candidate appointed. ”

12. A perusal of Section 5(1) extracted hereinabove shows that the management has to as soon as possible, fill in every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy in the manner prescribed. Every person appointed to fill a permanent vacancy except shikshan sevak shall be on probation for a period of two years and subject to the provisions of sub-sections (3) and (4). On completion of this probation period of two years, the employee so appointed shall be deemed to have been confirmed. Rule 9(2) lays down that appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee. Sub-rule (3) thereof lays down that unless otherwise provided in the 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. Rule 9(3) contemplates that candidates desirous of appointment to apply for such post by making an application in writing. The application in writing can be made upon issuance of advertisement so that the possibility of nepotism, favouritism, partiality is ruled out. There will be competition amongst eligible candidates. In short, object of issuing Advertisement is to ensure that there is not back door entry of any candidate. In taking this view, I am supported by the decision of Division Bench of this Court in the case of **Priyadarshini Education Trust** [*supra*]. In paragraph 11, Division Bench has held thus:

“11. It was argued by Advocate Shri Kazi that Rule 9 is the only rule, regarding the manner of appointment of staff and, therefore, the procedure as contained in this rule, must be taken as “*in the manner prescribed*” as contemplated by sub-section (1) of section 5 . He also referred to sub-rule (8) and pointed out that the said sub-rule makes a provision for advertisement of the vacancy in at least one newspaper having wide circulation, when the management desires to fill in the vacancies reserved for SC/ST/DTNT/OBC. According to him, sub-rule (3) makes no such provision and, therefore, it must be inferred that there is no necessity to issue an advertisement for the purpose of filling up vacancies of open category.

We are unable to appreciate, much less accept, such an argument. Referring to proviso to sub-section (1) of section 5 of the Act, it is evident that, as soon as there is vacancy, the management is required to communicate with the Education Officer, Zilla Parishad. The vacancy is to be filled in, from the list of surplus persons maintained by the Education officer. This is the first indication of control of the State over the recruitment and appointment of staff, even of private schools. Even on reference to sub-rule (3) of Rule 9, the candidate eligible for appointment and desirous of applying for such post, is required to apply in writing, by giving full details. We are unable to visualise a possibility of deserving candidate knowing about the vacancies in any private schools, unless the school invites applications by advertisement. The persons, who may learn about vacancies without advertisement, may only be kith and kins or those in close contact with the management or at the most staff members. If argument of Advocate Shri Kazi is to be accepted, it will be tantamount to accepting that rule 9 is drafted in such a manner as to promote nepotism, so far as appointments of open category candidates to teaching and non-teaching posts in private schools are concerned. If the argument of Advocate Shri Kazi is to be accepted, Rule 9 will have to be read in a fashion, where reserved category candidates are required to enter the service by competing amongst themselves, but an open category candidate may be in a position to seek an appointment without competing. Legislature could not have intended to prescribe a manner of recruitment which would discriminate between reserved and un-reserved categories in respect of manner in which they can seek appointments. A legislation making it easier for a reserved candidate, may be justified, in view of Article 15(4) of the Constitution. But, a reverse position cannot be justified by any line of argument.

Article 14 guarantees equality before law and Article 16 gives equality of opportunity in the matter of public

employment. Article 16 91) reads;

“16. Equality of opportunity in matters of public employment.-(1) There shall be equality of opportunity *for all citizens* in matters relating to employment or appointment to any office under the State.

In case we are to accept the submission as advanced by Advocate Shri Kazi, Rule 9 not only creates a discrimination in the recruitment and appointments of candidates between reserved and unreserved categories (making it more difficult for the reserved categories), but it also denies equal opportunity for all citizens desirous of seeking employment/appointment. In the absence of any advertisement, only those favoured by nepotism will be able to seek employment/appointments at the cost of all equally placed and desirous candidates, who are ignorant of such vacancies. Any procedure for recruitment/appointment, which does not afford equal opportunity to all eligible and deserving candidates to compete for seeking appointment and employment, must be seen and termed as unconstitutional as being violative of Articles 14 and 16 (1).

On reference to Rule 9 sub-rule (2), it can be seen that appointments of teaching and non-teaching staff are required to be done by the School Committee and only the short term appointments in leave vacancies, of a duration not exceeding three months are permitted to be done by the Head, if so authorized by the School Committee.

In this context, we may also refer to the text of sub-section (2) of section 5 which is already re-produced hereinabove. From the opening part “Every person appointed to fill in permanent vacancy shall be on probation for a period of two years....”, it is evident that once a person is selected in the manner prescribed and duly appointed, the Management or the School Committee has no option. Such a person must be appointed on probation. If there is a permanent vacancy and if a person duly qualified is selected in the manner prescribed and then duly appointed, the Management has no choice or option to appoint him for a limited period such as one academic year or shorter than that.

Thus, although sub-rule (3) of Rule 9 does not specifically speak of requirement of publication of vacancies by an advertisement and inviting applications from candidates eligible and desirous of seeking appointment, as sub-rule (8) speaks for the purpose of filling up the vacancies reserved under sub-rule (7), requirement of such an advertisement must be read within the provisions for the reasons discussed hereinabove and which may be summarized, at the cost of repetition as follows.

(i) Statute is enacted for the purpose of regulating the recruitment in private schools in the State.

(ii) Interpretation that sub-rule (3) of Rule 9 does not prescribe publication of advertisement, when read in the light of sub-rule 8, would be discriminatory and capable of promoting arbitrariness and nepotism.

(iii) Such an interpretation would be against the spirit of Articles 14 and 16 of the Constitution, and therefore, interpretation which would make Rule 9 unconstitutional will have to be rejected.

(iv) When sub-section (2) of section 5 compels the Management to appoint eligible, duly selected candidate only on probation, the backdoor entry of a person who alone knows about existence of vacancy cannot be accepted as palatable interpretation either of Rule 9 or section 5 read with Rule 9.”

13. A perusal of paragraph 11 extracted hereinabove shows that after referring to Rule-9(3), Division Bench held that “the candidate eligible for appointment and desirous of applying for such post is required to apply in writing by giving full details. We are unable to visualise a possibility of deserving candidate knowing about the vacancies in any private schools, unless the school invites applications by advertisement. The persons, who may learn about vacancies without advertisement, may only be kith and kins or those in close contact with the management or at the most staff members. If argument of Advocate Shri Kazi is to be accepted, it will be tantamount to accepting that rule 9 is drafted in such a manner as to promote nepotism, so far as appointments of open category candidates to teaching and non-teaching posts in private schools are concerned. If the argument of Advocate Shri Kazi is to be accepted, Rule 9 will have to be read in a fashion, where reserved category candidates are required to enter the service by competing amongst themselves, but an open category candidate may be in a position to seek an appointment without competing. Legislature could not have intended to prescribe a manner of recruitment which would discriminate between reserved and un-reserved categories in respect of

manner in which they can seek appointments”.

14. The Division Bench further observed that “in case we are to accept the submission as advanced by Advocate Shri Kazi, Rule 9 not only creates a discrimination in the recruitment and appointments of candidates between reserved and unreserved categories (making it more difficult for the reserved categories), but it also denies equal opportunity for all citizens desirous of seeking employment/appointment. In the absence of any advertisement, only those favoured by nepotism will be able to seek employment/appointments at the cost of all equally placed and desirous candidates, who are ignorant of such vacancies. Any procedure for recruitment/appointment, which does not afford equal opportunity to all eligible and deserving candidates to compete for seeking appointment and employment, must be seen and termed as unconstitutional as being violative of Articles 14 and 16 (1).”

15. It was also held that “although sub-rule (3) of Rule 9 does not specifically speak of requirement of publication of vacancies by an advertisement and inviting applications from candidates eligible and desirous of seeking appointment, as sub-rule (8) speaks for the purpose of filling up the vacancies reserved under sub-rule (7), requirement of such an advertisement must be read within the provisions for the reasons discussed hereinabove and which may be summarized, at the cost of repetition as follows.”

16. In my opinion, careful reading of the decision of Full Bench of this Court in **Priyadarshini Education Trust** [*supra*] does not indicate that the said decision is applicable only to a School which is getting grant in aid. In other words, the said procedure applies to the Schools which are not getting any grants from the Government also. I am

respectfully bound by the ratio laid down by the Division Bench in the case if **Priyadarshini Education Trust** [*supra*] and prefer to follow that decision in preference to the decision of learned Single Judge in **Jagadamba Education Society's** case (*supra*).

17. Reliance was placed upon paragraph 19 of the decision of this Court in **Jagadamba Education Society** (*supra*). A perusal of paragraph 19 of that decision shows that the Court was considering appointment of a teacher on a permanent vacancy by the management for the years together. It is in that context, the learned Single Judge opined that if the observations made by the Division Bench in **Priyadarshini Education Trust Vs. Ratis (Rafia) Bano d/p. Abdul Rasheed, 2007 (6) Mh.L.J. 667** in respect of the grant-in-aid school are held to be applicable to the non-aided schools, it will amount to rewarding the management for non-compliance of the rules and for making of appointments of qualified and needy persons year to year for ulterior motives and their own benefits. In other words, the Court was commenting upon the modus operandi of the management appointing teachers on permanent post on temporary basis for years together and not on permanent basis. A perusal of paragraph 19 shows that even the Court observed that the management cannot be rewarded for non-compliance of the rules and making appointments of qualified and needy persons year to year. In my opinion, the said decision does not lay down proposition that no advertisement is required to be issued, no interviews are required to be held for appointing qualified person on a permanent vacant post.

18. Mr. Bansode relied upon the decision of this Court in the case of **Vilas Jijabrao Chavan** (*supra*). In paragraph 15, the learned Single Judge observed that it is the obligation cast on the management under Section 5 of the Act to follow the due procedure laid down for selecting

an employee. The management has to get prior permission from the Education Officer for recruiting employees. The management has to get the advertisement published and it is bound to conduct the selection process for appointing a candidate.

19. In the present case, the Tribunal has recorded a categorical finding that no procedure as contemplated by Section 5 read with Rule 9 of the Rules was followed while appointing the appellant. In fact from paragraph 6 onwards, the Tribunal after perusing the material on record observed that the notices produced by the appellant are bogus. The muster roll produced by the respondent No.2 appears to be authentic. Name of the appellant does not appear in the muster roll filed by the respondent No.2. In paragraph 7, the Tribunal considered inspection report dated 02.04.2004 which shows that there were only two teachers working in the school and therefore, the contention of the appellant that he was appointed in the school in the year 2003, appears to be false. The documents produced by the appellant do not appear to be authentic and are not sufficient to establish that he has been duly appointed on the permanent post by following the procedure laid down under Section 5 of the Act.

20. A perusal of the affidavit dated 05.02.2014 filed by the Secretary does not even remotely indicate that he made grievance about record being in custody of Chairman. It also does not disclose that the office of the Trust is at the residence of the then Chairman and therefore, the record of the Trust is with the Chairman. However, that aspect is highlighted for the first time by filing affidavit in this Court. A perusal of paragraph 7 does not indicate that record of the **school** is in the house of the then Chairman Shri Maruti Shivram Keskar. What paragraph 7 refers to is the record of the **Trust** is lying in the cupboard in the house

of the then Chairman Shri Maruti Shivram Keskar.

21. After considering the material on record, I do not find that the Tribunal committed any error in dismissing the appeal. Mr. Bansode and Mr. Bodake submitted that appellant is working for more than 10 years in the school. The fact however remains that without following due process of law, appellant was appointed. In view of this as also for the findings recorded in paragraphs 6 and 7 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

22. At this stage, Mr. Bansode seeks deletion of prayer clause (c) with liberty to adopt appropriate proceedings in that regard. Permission to delete prayer clause (c) is granted with liberty to adopt appropriate proceedings. Amendment shall be carried out forthwith. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab