

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5010 OF 2004

The Education Officer (Secondary),
Zilla Parishad Solapur

...Petitioner

Versus

Anuradha Bhimrao Wakure & Ors.

...Respondents

....

Ms. M.S. Bane, B Panel Counsel for the Petitioner.

Mr. Pramod N. Patil, Advocate for Respondent No.1.

Mr. Pratap Patil, Advocate for Respondents No.2 and 3.

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CORAM : R. G. KETKAR, J.

DATE : 22nd JUNE, 2017

JUDGMENT :

1. Heard Ms. M.S. Bane, learned A.G.P. for the petitioner, Mr. Pramod Patil, learned Counsel for respondent No.1 and Mr. Pratap Patil, learned Counsel for respondents No.2 and 3, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (1) judgment and order dated 18.8.1998 in Appeal No.140/1995, (2) order dated 14.8.2002 and (3) order dated 18.10.2003 in Misc. Application No.45/2003 passed by the learned Presiding Officer, Additional School

Tribunal, Pune Region, Solapur (for short, 'Tribunal'). By order dated 18.8.1998, the Tribunal set aside oral termination order dated 18.9.1995 and directed reinstatement of the first respondent to the post of Assistant Teacher since the date of termination dated 18.9.1995 and directed the petitioner to pay the back-wages to the first respondent. By order dated 14.8.2002, the Tribunal directed the petitioner to draw the arrears of back-wages and pay the same to the first respondent within a period of one month from the date of order dated 18.8.1998 failing which action will be taken against the petitioner. By order dated 18.10.2003, the Tribunal directed execution of the orders as if it were decree passed by the Civil Court. The relevant and material facts giving rise to filing of this Petition, briefly stated, are as under.

3. Respondent No.1 instituted Appeal No.140/1995 before the Tribunal under Section 9 of the Act *inter alia* contending that she had completed M.Sc. in the year 1992 and B.Ed. in the year 1993. She is eligible and qualified for appointment on the post of Assistant Teacher. It is her case that respondents No.2 and 3, hereinafter referred to as 'Management', had issued advertisement on 4.5.1993. She applied on 22.5.1993. She was

interviewed and was found suitable and qualified. She was issued appointment order on 22.6.1993. She was appointed on probation for a period of two years in a clear and permanent vacant post as Assistant Teacher. She was appointed from Open category. The petitioner gave approval to her appointment on 19/21.3.1993. Though first respondent was appointed on probation for a period of two years, the Management issued advertisement on 6.5.1994 inviting applications for various posts including the post on which first respondent was appointed. Respondent No.1 applied for the said post on 16.6.1994. She was interviewed and as she was qualified and eligible, she was selected. She was appointed on probation for a period of two years by appointment order dated 16.6.1994. Though the work of first respondent was satisfactory, all of a sudden from 18.9.1995 she was not allowed to sign the attendance muster maintained by the Management. She was orally informed that her services are terminated on 18.9.1995. Respondent No.1, therefore, preferred appeal under Section 9(1)(a) of the Act challenging otherwise termination of her services.

4. The Management filed written statement at Exhibit-7 resisting the appeal. The Management admitted in paragraph-10

of the written statement that first respondent was appointed on probation for a period of two years. The Management denied that the work and behaviour of first respondent was satisfactory and that the post held by first respondent was vacant and it was contended that one Mr.N.S. Koli who belongs to S.T. category has been appointed to the post held by the first respondent. The Management also contended that appeal preferred by first respondent was time barred.

5. The petitioner, who was respondent No.3, filed written statement *inter alia* contending that there was back log of three Scheduled Tribe candidates in the school run by the Management. Appointment of respondent No.1 made by the Management on probation for a period of two years was, therefore, contrary to law. As the post was reserved for S.T. category, the Management ought to have made appointments subject to the production of no-objection certificate of Social Welfare Officer and Employment Exchange. In case of non-availability of backward class candidates, the appointment should be on year to year basis for five years as per Rule 9(9)(a) of the Maharashtra Employees of Private School (Condition of Service) Rules, 1981 (for short, 'Rules'). The petitioner, therefore,

prayed for dismissal of the appeal.

6. By the impugned order dated 18.8.1998, the Tribunal allowed the appeal and set aside the oral termination order dated 18.9.1995. The Tribunal directed reinstatement of first respondent to the post of Assistant Teacher since the date of termination dated 18.9.1995 and directed the petitioner to pay back-wages to first respondent.

7. By order dated 14.8.2002, the petitioner is directed to draw the arrears of back-wages and to pay the same to first respondent within a period of one month from the date of the order dated 18.8.1998, failing which action will be taken against the petitioner.

8. By order dated 18.10.2003, the Tribunal directed execution of the orders as if it is a decree passed by the Civil Court. It is against these orders, the Petition is instituted.

9. In support of this Petition, Ms.Bane has reiterated the contentions advanced before the Tribunal. She submitted that there was back log of Scheduled Tribe category. Instead of filling-up the back log from Scheduled Tribe category, the Management appointed first respondent who is from Open

category. The Management committed error in appointing first respondent on probation for a period of two years. The Management while issuing appointment order acted contrary to Rule 9(9)(a) of the Rules. The Tribunal was, therefore, not justified in ordering reinstatement. She further invited my attention to paragraph-20 of the order dated 18.8.1998. In that paragraph, the Tribunal recorded oral submission advanced by the Secretary of the Management that Government may be directed to pay salary of first respondent because Education Officer does not approve her salary. The Tribunal observed that if the school is recognized and it is aided, the Government must pay salary of the teacher. She submitted that said finding is totally unsustainable. She further submitted that the Government should not be saddled with payment of salary of the first respondent on account of mistake committed by the Management. She submitted that the petition deserves to be allowed thereby setting aside the impugned orders.

10. On the other hand Mr. Pramod Patil supported the impugned orders. He submitted that after following the procedure for appointment, the Management had appointed first respondent on probation for a period of two years. First

respondent was appointed on a clear, vacant and permanent post. He submitted that as the post was not reserved for backward class candidate, there was no question of obtaining no-objection certificate from the Social Welfare Officer and Employment Exchange. The Management was justified in appointing first respondent on probation for a period of two years and could not have appointed her on temporary basis that too for year to year. He further submitted that the first respondent gives up her claim for back-wages. Mr. Pratap Patil supported the direction issued by the Tribunal to the petitioner as regards payment of back-wages.

11. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the order dated 18.8.1998 passed by the Tribunal shows that the Tribunal has considered the fact that first respondent is qualified as M.Sc. B.Ed. The Management had invited applications on 4.5.1993. In pursuance thereof, first respondent applied on 22.5.1993. She was interviewed and was found qualified for appointment on the post of Assistant Teacher. She was selected by the Interviewing Committee and the order of her appointment was issued on

22.6.1995. In paragraph-15, the Tribunal observed that the first respondent was appointed as Assistant Teacher on 22.6.1993 for a period of two years. The petitioner approved her appointment upto 31.3.1994. In my opinion, once first respondent was appointed on probation for a period of two years, the petitioner herein could not have issued letter of approval of her appointment upto 31.3.1994. It was further observed that the appointment of the first respondent was on the permanent post against clear vacancy and was in open category. The Tribunal also referred to Section 5(3) of the Act and also Rules and observed that there were no complaints about the behaviour and work of first respondent and no material is produced by the Management to establish that the work and behaviour of first respondent was not satisfactory. Even one month's salary was not paid to the first respondent in lieu of notice. For the reasons recorded in paragraphs-15 to 19, I do not find that the Tribunal committed any error in passing order dated 18.8.1998. Insofar as the direction against the petitioner to pay back-wages is concerned, Mr. Pramod Patil fairly stated that first respondent is not claiming back-wages. In view thereof, Petition is disposed of in following terms:

- (i) Petition is partly allowed.
- (ii) The oral termination order dated 18.9.1995 passed against the first respondent is set aside. Respondent No.1 is reinstated to the post of Assistant Teacher since the date of her termination on 18.9.1995 with continuity of service and all consequential benefits except back-wages.
- (iii) Rule is partly made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)