

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2669 OF 2000

Shri Sant Dnyaneswar Shikshan
Prasarak Mandal,
Shivnagar, At and Post Kannad,
Tq. Kannad, Dist. Aurangabad,
Through its Secretary

-- PETITIONER

VERSUS

1. The State of Maharashtra
2. Ulka Anantrao Sardeshpande,
Age-45 years, Unemployed,
R/o Maliwada, Kannad, Tal.Kannad,
Dist. Aurangabad
3. The Education Officer (Primary)
Zilla Parishad, Aurangabad,
Dist. Aurangabad

-- RESPONDENTS

Mr.S.S.Pawar, Advocate for the petitioner.
Mr.V.S.Badakh, AGP for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/03/2018

ORAL JUDGMENT :

1. The petitioner/Management is aggrieved by the judgment and order dated 02/03/2000 delivered by the School Tribunal, Aurangabad by which Appeal No.4/1993 filed by the respondent No.2 / original appellant, has been allowed. Her oral termination dated 01/12/1992 is quashed and set aside and she is granted

reinstatement with continuity and 50% back wages.

2. While admitting this petition on 06/02/2001, this Court has stayed the impugned judgment and subsequently the said interim relief is confirmed on 20/07/2001.

3. I have considered the strenuous submissions of the learned Advocate for the petitioner/ Management and the learned AGP on behalf of respondent No.1. None appears for the original appellant and the Education Officer (Primary) despite this matter having been adjourned on 08/05/2017, 09/05/2017, 27/07/2017 and 03/03/2018.

4. The thrust of the petitioner's case can be summarized as under :-

[a] The appellant/teacher was engaged temporarily as an "Assistant Teacher" from 05/06/1987 till 1992. She had acquired the qualification of B.A.B.Ed. though the requisite qualification was H.Sc. D.Ed.

[b] At the time of her appointment, she was 32 years of age and was therefore overage by 2 years considering Rule 9(4)(a) of the M.E.P.S. Rules, 1981.

[c] She had tendered an affidavit that though she is highly qualified, she will claim the salary scale available to the "Assistant Teacher" with D.Ed. qualifications.

[d] She was not been orally terminated on 01/12/1992 as the Management had issued a letter of termination by notice dated 12/10/1992. The said notice was posted "Under Certificate of Posting" (UCP).

[e] The School Tribunal has wrongly disbelieved the petitioner / Management as there was no acknowledgement of service of the notice of termination.

5. Considering the submissions of the learned Advocate for the petitioner as have been summarized above, in so far as the service of notice of termination is concerned, it requires no debate that an attempt to serve a notice by UCP cannot be held to be sustainable as it leaves no evidence that the said notice was received by the addressee. Had that been the case, the appellant would have contended that she was terminated by notice dated 12/10/2012, instead of contending that she was orally terminated on 01/12/1992. Service of UCP cannot be presumed to be a proper service. The Tribunal has, therefore, rightly disbelieved the Management.

6. In so far as the contention of the Management that an approval was not granted to the appellant and hence she was terminated is concerned, this issue has been settled by the learned Full Bench of this court in the matter of St.Ulai High School Vs. Shri

Devendraprasad Jagannath, [2007(109) Bom.L.R. 60 = 2007(1) Mh.L.J. 597] concluding that lack of approval cannot be a ground for terminating the services of an employee. On this count as well, the petitioner cannot substantiate its case of termination.

7 The petitioner has then taken a ground that the respondent was overage. This amounts to taking advantage of it's own wrong. The Management was aware that the appellant was born on 12/05/1955. Yet she was appointed on 05/06/1987 when she was 32 years of age. Moreover, the proviso to Rule 9(4)(1) indicates that the upper age limit in the case of women, ex-servicemen and the persons having previous experience, can be relaxed by taking the permission of the Deputy Director of Education. This Management therefore could have moved a proposal to the Deputy Director of Education and sought relaxation in the case of the appellant as she was qualified and it is not the case of the Management that she was under qualified.

8. In so far as the contention of the Management that the appellant was over qualified is concerned, this issue has been put to rest by the Hon'ble Apex Court in the matter of State of Maharashtra Vs. Tukaram Tryambak Chaudhari [2007 AIR SCW 1321] by

concluding that a primary teacher who has acquired the qualification of B.Ed. can be appointed for imparting education in the primary school for the 5th to the 7th standard classes and such a candidate is entitled to be appointed and continued as a trained teacher in the B.Ed. scale. On this count as well, the reason for termination put forth by the Management cannot be sustained.

9. The petitioner/Management has not taken a stand that the appointment of the employee was illegal.

10. Owing to the interim relief granted by this Court on 06/02/2001, the appellant is out of employment. It is under fortuitous circumstances that she is kept out of employment. For the reasons recorded as above, the impugned order does not amount to being a perverse or an erroneous order. 50% back wages have been granted by the School Tribunal. The appellant has not filed a counter petition praying for enhancement of the 50% back wages.

11. Considering the above, I find that this petition is without merits and stands dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)