

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10987 OF 2011

Shri Datta Shikshan Prasarak Mandal & Anr. ...Petitioners
Vs.
Deepak Ramrao Patil & Ors. ...Respondents

Mr.Rajendra J. Godbole with Vishal Munglikar for Petitioners.
Mr.U.P. Warunjikar with Satyajeet Shirke for Respondent No.1.
Ms.Vaishali Nimbalkar, AGP for Respondent No.2.

CORAM : S.C. GUPTE, J.

DATE : 20 JULY 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the School Tribunal at Solapur in an appeal filed to it under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act"). By the impugned order, the School Tribunal quashed and set aside termination order issued to Respondent No.1 by the school management represented by the Petitioners herein and directed the former's reinstatement in service with full backwages.

3 The Respondent was appointed as a part-time teacher in the secondary school run by the Petitioners. The appointment was subject to the approval of the Education Officer and availability of adequate strength of students. The Education Officer accorded his approval only for a specific period. It is the case of the Respondent that this ad-hoc and temporary

appointment as a part-time teacher was continued from time to time, though with breaks, till about July 2007. On 30 July 2007, the Headmaster of the school issued a communication to Respondent No.1 appointing him as a full-time teacher subject to approval of the Education Officer. The appointment was to take effect from 1 August 2007. (It is the case of the management that this appointment was against a reserved post, though this fact is disputed by Respondent No.1). This appointment was not approved pending verification of the roaster. The matter dragged on for some time. On 9 February 2010, Backward Community Cell, after verifying the roaster, made it clear that quota of S.C. and O.B.C. category candidates was unfilled in the school. On that basis, the Education Officer, by his communication dated 22 November 2010, refused to accord approval to the appointment of Respondent No.1 on the ground *inter alia* that the post against which he was appointed was a reserved post, whilst he belonged to the open category. In the premises, by its order of termination dated 6 December 2010, the Petitioner terminated the services of Respondent No.1 by giving one month's notice *inter alia* on the ground that the appointment was mistakenly made in a reserved post. The termination was challenged by Respondent No.1 before the School Tribunal in the present appeal. The School Tribunal allowed the appeal. The Petitioners' objections including their contention that his appointment was not made by following regular procedure for such appointment, was negated by the School Tribunal mainly on the ground that in view of the GR issued by the State Government on 1 January 2001 requiring part-time teachers to be absorbed as full-time teachers subject to the conditions mentioned therein, it was not necessary to follow the selection procedure as claimed by the Petitioners herein.

4 It is not a matter of controversy in the present petition, and learned Counsel for Respondent No.1 even admits, that the Government Resolution of 1 January 2001 produced before the School Tribunal does not apply to the Petitioner's case. The G.R. was in respect of teachers in junior college and not secondary school teachers. Learned Counsel for Respondent No.1, however, relies on another G.R., namely, G.R. issued by the State Government through School Education and Sports Department on 10 June 2005. Learned Counsel submits that this G.R. applies to all recognized secondary schools, whether private or aided. The G.R. of 10 June 2005 does provide for appointment as 'Shikshan Sevak' of part-time teachers. Such appointment is, however, subject to the condition of availability of a post of full-time teacher and fulfilment of other terms and conditions for such posts. Such appointments are also subject to the reservation policy concerning backward classes. The G.R. also provides that if any teacher has worked for six years as a part-time teacher and is to be accommodated in the post of a full-time teacher, his appointment may be made as an assistant teacher in the regular pay scale, subject to fulfilment of all applicable terms and conditions, and not as 'Shikshan Sevak' on probation. Relying on this G.R., learned Counsel submits that in the present case, Respondent No.1 fulfils its conditions, namely, work as part-time teacher for over six years and possession of qualifications of a full-time teacher in the requisite pay scale.

5 No doubt, Respondent no.1 does fulfil the two conditions referred to by learned Counsel. It is, however, important to note that whether or not his appointment as part-time teacher originally in the year 1998 or as full-time teacher on 1 August 2007 was in accordance with the applicable terms and conditions, including the applicable procedure for

such appointments under the MEPS Act, is obviously not considered fully by the Tribunal. That was purportedly on the basis that the G.R. of 1 January 2001 covers his case. The Tribunal proceeded on the footing that since the Respondent's case was covered under the G.R. of 1 January 2001, it was not necessary to consider whether the appointments were originally made after following due procedure applicable under the MEPS Act.

6 Since the appointment is sought to be justified under a G.R., which was not before the School Tribunal and since any appointment under this G.R. is subject to compliance of the terms and conditions applicable to the appointment, which in turn calls for a factual inquiry as to fulfilment of the terms and conditions, the only option for this court is to remand the matter to the School Tribunal for a fresh decision on this issue in accordance with law.

7 Accordingly, the petition is disposed of by quashing and setting aside the impugned order dated 13 September 2011 and remanding the matter to the School Tribunal at Solapur for a fresh hearing in accordance with law and in terms of the above discussion. It is made clear that all rights and conditions of the parties on merits of the appointment, including the question of compliance with the terms and conditions for such appointment as also the aspect of reservation, are kept open. The School Tribunal, considering the vintage of the controversy, shall decide the appeal on remand, as expeditiously as possible and preferably within a period of three months from today. The parties shall appear before the School Tribunal on 27 July 2018 and submit an authenticated copy of this order, whereupon the School Tribunal may fix the schedule of hearings in the appeal.

8 It is made clear that in case the appeal of Respondent No.1 is allowed by the School Tribunal, he shall not be entitled to claim any backwages for the period between this day and the date of the order in appeal. It is also clarified that as regards his claim of backwages generally, all rights and contentions of the parties on merits are kept open.

(S.C. GUPTE, J.)