

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 600 OF 2018

SMT. HARSHAL DEELIP PATIL
VERSUS
VANITA SAMAJ DHULE
THROUGH THE PRESIDENT AND OTHERS

Advocate for Petitioner : Mr. A.P. Deshmukh
i/b. Adv. Mr. A.V. Hon.
Advocate for Respondent Nos. 1 to 3 : Mr. S.S. Deshmukh.
Advocate for Respondent No. 4 : Mr. N.S. Desale.
Advocate for Respondent No. 5 : Mr. P.S. Patil.
AGP for Respondent No. 6 : Mrs. P.V. Diggikar.

CORAM : M.S. Karnik, J.
Dated : 07.08.2019

Per Court :

1. Heard the learned counsel for the respective parties so also learned AGP.
2. The order impugned in this petition is an order passed by the Presiding Officer, School Tribunal, Nashik, in Appeal No. 35/2015 filed by the petitioner. The petitioner had challenged the order terminating her service and prayed for reinstatement along with full back wages and with continuity in service.

3. The petitioner was appointed as a Shikshan Sewak with the respondent No. 1 during the period from 01.03.2007 to 28.02.2010. On completion of three years, the petitioner was appointed on regular pay scale of Assistant Teacher with effect from 01.03.2010. The petitioner's appointment was approved by the respondent No. 4 as a Shikshan Sewak vide approval order dated 21.04.2007.

4. A complaint was made that the petitioner was appointed against a reserved post. One Shri Rahul C. Bharti filed a complaint to the Chief Secretary, School Education and Sports Department on 30.06.2014 against the approval of the petitioner as assistant teacher. It is the case of the management that the backlog of ST category was fulfilled. According to the management, even roster register of the management was verified on 22.02.2010.

5. The Commissioner, Dhule Municipal Corporation by an order dated 16.02.2015 informed the Deputy Director of Education, Nashik to cancel the approval for appointment of the petitioner. The Deputy Director vide an order dated 26.05.2015 directed the respondent No. 4 to cancel the approval to the appointment of the petitioner. The respondent No. 4 communicated to the respondent No. 1 on 03.06.2015 to terminate the services of the petitioner. Services of the petitioner came to be terminated with effect from 09.06.2015. The petitioner's Appeal before the School Tribunal, Nashik, is dismissed by the

impugned order.

6. I have gone through the order passed by the School Tribunal. The School Tribunal was of the opinion that the burden was on the appellant to come with a definite case that she was selected after a proper selection procedure to fill in permanent vacancy and she was duly qualified for appointment to the post in question. The School Tribunal was of the opinion that respondent management has not published the advertisement in daily newspaper to fill in the vacant post. The order of the School tribunal reveals that as the petitioner was appointed in the post which was meant for the ST category, the petitioner had no right to continue. The School Tribunal thus held that there was backlog of reserved category candidate in the said school and the petitioner was appointed on a reserved post.

7. My attention is invited by the learned counsel for the petitioner to the affidavit-in-reply filed on behalf of respondent No. 6 i.e. Deputy Director of Education, Nashik Division, Nashik. In the said affidavit it is stated thus :

4. I say that, on the basis of complaint application of Mr. Rahul Bharati against the appointment of petitioner inquiry was conducted by Commissioner of Municipal Corporation, Dhule. After inquiry he suggested for cancellation of approval to the appointment of the petitioner to respondent No.6 Dy. Director of Education Nashik. I say that, at the time of appointment of the petitioner on 01.03.2007

*there was backlog of S.T. category in teaching cadre. Even though respondent management appointed the petitioner who is of O.B.C. category. I say that, respondent management has fulfilled the backlog of S.T. category on 24.11.2008. As per copy of roster register verified on 22.02.2010 by Asstt. Commissioner (B.C.Cell) Nashik Region Nashik the backlog of B.C. candidates in teaching cadre is nil. The copy of the roster register verified on 22-2-2010 is annexed herewith and marked as **EXHIBIT R-1.***

8. From the affidavit it can be seen that the roster was verified on 22.02.2010 by the Assistant Commissioner (B.C. Cell) Nashik Region, Nashik, indicating that the backlog of B.C. candidates in teaching cadre is nil. It is, further, stated that the respondent-management has fulfilled the backlog of ST category on 24.11.2008. The petitioner belongs to the OBC category.

9. No doubt the petitioner was appointed on 01.03.2007 as a Shikshan Sewak. However, as on the date when the petitioner was appointed as an Assistant Teacher there was no backlog. The only reason for cancellation of approval is petitioner's appointment in a reserved post and not fulfilling the backlog of S.T. category. The petitioner has been working as a Shikshan Sewak from 01.03.2007. It is on the basis of a complaint made almost seven years after the appointment that cognizance was taken.

10. In the facts of the present case, it is seen that the petitioner has been working from 01.03.2007 as a Shikshan Sewak and later on, was appointed as an Assistant Teacher from 01.03.2010. The roster register of the respondent-management was duly verified on 22.02.2010 when the backlog of the BC candidates is stated to be nil. The backlog of S.T. category is fulfilled on 24.11.2008. Moreover, the petitioner belongs to OBC category. Thus no serious prejudice is caused to any BC candidate as even the S.T. category's backlog is complete. It would be thus seen that the management has fulfilled the backlog of B.C. candidates in teaching cadre.

11. In the peculiar facts of this case, as the petitioner has been working in the vacant post from 01.03.2007 and further as on the date when the petitioner was appointed as Assistant Teacher, it is declared that there was no backlog, in my opinion it would be unfair to cancel the approval of the petitioner and that too with retrospective effect. Moreover, it is the settled law that merely because the approval is cancelled can not *ipso facto* result in termination of services. The management also was not justified in terminating the services of the petitioner only on the ground that the approval of the petitioner is cancelled.

12. This Court by an order dated 19.01.2018, while issuing notice, had directed the respondent Nos. 1 to 3 not to fill in the post of teacher for the primary

section in respondent No. 3-School.

13. Learned counsel for the petitioner also placed reliance on the decision of this Court in *Assaram Raibhah Dhage Vs. Executive Engineer, Sub Divisional, Mula*, [1988 (4) Bom. C.R. 158 : 1987 (2) CLR 231], wherein the Court has held the termination with retrospective effect is unforeseen in law and cannot be countenanced. The termination of services of the petitioner is with retrospective effect and therefore, contrary to the law laid down in Assaram's case.

14. The petitioner, an OBC category candidate was appointed as a Shikshan Sewak. The B.C. Cell certified the backlog to be nil. The approval is cancelled only on the ground that petitioner is appointed against a reserved post. In my opinion, the tribunal should have examined the impugned order only in the context of the reason on which it is based in the peculiar facts of this case.

15. The learned counsel for the petitioner, on instructions of the petitioner, states that he will not claim the back wages for the period from the date of termination till reinstatement. Learned counsel for the management states that the management will reinstate the petitioner with effect from 14.08.2019, if the petitioner reports for duties. However, it is clarified that the petitioner is entitled to reinstatement with continuity of service but without back wages.

16. For all these reasons, the order passed by the School Tribunal is set aside.
The petition is partly allowed.

S.P.C.

(M.S. Karnik, J.)