

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

WRIT PETITION NO. 982 OF 2008

Adhikarao Bhanudas Jadhav	...	Petitioner
V/s.		
Sevagiri Shikshan Prasarak Mandal & Ors.	...	Respondents

Mr.N.V. Bandiwadekar for Petitioner.
Mr.Sharad Bhosale i/b. Mr.Dilip Bodake for Respondent No.1.
Ms.M.S. Bane, AGP for the State.

CORAM : A.S. GADKARI, J.

DATE : 1st October 2019.

P.C. :

1] By the present Petition, under Article 227 of the Constitution of India, the petitioner has impugned Judgment and Order dated 20th December 2007 passed by the Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur, in Appeal No. 50 of 2002 filed under Section 9(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (for short, "M.E.P.S. Act") dismissing the said appeal and confirming the Order of termination of the petitioner dated 26th May 2001 issued by the respondent No.1.

2] Heard Mr.Bandiwadekar, learned counsel for the petitioner, Mr.Bhosale, learned counsel for respondent No.1 and Ms.Bane, learned AGP for respondent No.2. Perused the record.

3] The record indicates that, the respondent No.1 issued an advertisement dated 5th April 1999 in Marathi daily newspaper 'Sakal' calling for applications from persons for the posts mentioned therein including one post for 'peon'. The said post was reserved for the person belonging to 'Scheduled Tribe Category'. That, as the candidate from Scheduled Tribe Category was not available, the applicant came to be appointed by Order of appointment dated 26th April 1999. It is to be noted here that, in the said appointment letter, the category of post reserved on which the petitioner was appointed was not mentioned and therefore, it was inferred and construed that, the appointment was in open category. The respondent No.1 thereafter passed necessary resolution in its meeting dated 24th April 1999. A proposal dated 28th April 2000 was accordingly sent to the respondent No.2 by the respondent No.1 appointing the petitioner in the institution. The respondent No.2 by its Order dated 3rd April 2001 rejected the said proposal on the ground that there was backlog of direct appointees in the

‘OBC category-No.II’ and as the petitioner belongs to ‘Open Category’, the proposal of the respondent No.1 to appoint the petitioner in its institution cannot be accepted. After receipt of the said communication dated 3rd April 2001, the respondent No.1-society terminated the services of the petitioner by its notice dated 26th May 2001.

The petitioner feeling aggrieved by the said termination preferred Appeal No. 50 of 2002 under Section 9(1) of the M.E.P.S. Act before the School Tribunal, Kolhapur Region, Kolhapur. The School Tribunal has dismissed the said appeal by its impugned Judgment and Order dated 20th December 2007.

4] Mr.Bandiwadekar, learned counsel for the petitioner submitted that, the observations made by the respondent No.2 in its communication dated 3rd April 2001 are erroneous. He submitted that, as a matter of fact, there was no backlog pertaining to the posts which were to be filled in from ‘other backward class’ category. He drew my attention to the comparative chart on page No.13 of the Petition. He further submitted that, as a matter of fact, on the date of termination of services of the petitioner, a post in ‘open category’ was available with the respondent No.1 and therefore, the respondent No.2 ought to have directed the

respondent No.1 to absorb the petitioner in the post available for 'open category'. He submitted that, there are various errors in the impugned Judgment and Order passed by the School Tribunal and therefore, the impugned Judgment and Order needs to be quashed and set-aside by allowing the present Petition.

5] Mr.Bhosale, learned counsel for the respondent No.1 and Ms.Bane, learned AGP for the respondent No.2 vehemently opposed the Petition and supported the impugned Judgment and Order passed by the School Tribunal.

6] A minute perusal of the record would indicate that, the advertisement dated 5th April 1999 was very specific and the post wherein the petitioner was appointed, was infact, since inception shown to be reserved for a candidate belonging to the 'Scheduled Tribe' category. It is an admitted fact on record that, the petitioner is from 'Open Category' and therefore, the post which was reserve for a person belonging to the 'Scheduled Tribe' category cannot be occupied and/or allotted to a candidate belonging to 'Open Category'. The record further indicates that, the petitioner was appointed by the respondent No.1-management on probation basis against a post which was reserved for 'Scheduled Tribe'

category. It appears that, the appointment of the petitioner itself was not within the conformity of established principles of law. The Education Officer by its communication dated 3rd April 2001 has categorically stated that, there was a backlog of posts to be filled in from the category of 'other backward class' persons and therefore, the appointment of the petitioner in the post reserved for Scheduled Tribe Category cannot be accepted, as the petitioner has no right to hold a post marked for reserved category. It appears that, the services of the petitioner has been rightly terminated by serving him one month prior notice by the respondent No.1. It further appears that, the termination of the petitioner from the services of the respondent No.1 is not illegal.

7] After perusing the entire record, this Court is of the considered view that, the School Tribunal has not committed any error either in law or on facts while passing the impugned Judgment and Order and interference in it by this Court is not warranted.

8] I find no merits in the Petition. Petition is accordingly dismissed.

[A.S. GADKARI, J.]