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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 175 OF 2008
IN
WRIT PETITION NO. 3735 OF 1994

Sau. Shubahda Avinash Araokar
Aged about 46 years, Occ: Service,
Indian Inhabitant, Residing at
“Margasheersha”, Plot No. 8,
Ramwadi, Opp. Agarwal Hall,
Manpada Road, Dombivli (E),
Dist. Thane.

.. Appellant

Versus

1. Maharashtra Shikshan Prasarak Mandal,
A Public Charitable Trust, registered
under the Bombay Public Trust Act,
1950, under Serial No. E-219, having
its registered office at “Mahajan Building”,
Shiv Mandir Path, C-321, Ramnagar,
Dombivli (East), Dist. Thane.
2. Sau. Indumati Jagannath Mahajan
Adult, Indian Inhabitant,
Managing Trustee,
Maharashtra Shikshan Prasarak Mandal,
Having its registered office at
“Mahajan Building”,
Shiv Mandir Path, C-321, Ramnagar,
Dombivli (East), Dist. Thane.

3. The Deputy Director of Vocational Education and Training, Regional Office, 49, Kherwadi, Aliyavar Jung Marg, Bandra (East), Bombay 400 051.

4. The State of Maharashtra, Department of Education, Mantralaya, Mumbai.

.. Respondents

Mr. Ashutosh Gole for Appellant.

Mr. D. S. Mhaispurkar for Respondent No.1.

Mr. K. S. Thorat for Respondent Nos.3 and 4.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

NOVEMBER 27, 2019.

ORAL JUDGMENT [Per Pradeep Nandrajog, CJ.] :

1. Heard learned Counsel for the parties.

2. Of the four employees who commenced a common journey when they filed an Appeal registered as Appeal No. 8 of 1994 and succeeded, only the Appellant marches forward.

3. Challenging their services being terminated by an order dated 27th January, 1994, the Appellant and her co-companions filed an Appeal before the School Tribunal and succeeded when order dated 26th July, 1994 was passed by the

School Tribunal. A bonafide version of the Appellate order would be that since termination was on account of the post held being abolished due to decrease in the strength of the students studying in the school, the Management ought to have proceeded to declare the employees surplus requiring re-employment envisaged by Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981.

4. The Management of the School filed a Writ Petition which has been allowed by the learned Single Judge vide impugned Oral Judgment dated 7th & 10th December, 2007. The order passed by the School Tribunal has been quashed and the Appeal filed by the Appellant and her three co-employees has been dismissed.

5. To deal with the contention advanced in the Appeal, it would be relevant at this stage to note the facts which have formed the backdrop of the impugned judgment.

6. Maharashtra Shikshan Prasarak Mandal, a Public Charitable Trust established a primary school known as Maharashtra Vidyalay as also a secondary school known as Dhanaji Nana Chaudhary Multipurpose High School and Junior

College. In the academic year 1991-1992 the Trust started a centrally sponsored plus two stage Vocational Educational Scheme under the New Education Policy. The additional classes were admitted to 100% grant-in-aid and thus the terms and conditions of eligibility had to be as prescribed by the Government Rules. An advertisement was issued on 14th May, 1991 to fill up various posts including the post of Instructor to which the appellant was appointed.

7. The appellant lacked the necessary experience and thus a communication was addressed to the Competent Authority in the Education Department to grant relaxation for the reason the post in question was 100% admissible to grant-in-aid.

8. Pending approval, since the academic session had commenced on 10th July, 1991, the appellant was appointed as an Instructor and clearly informed that the appointment was temporary and for a period of one year. The reason was obvious. Approval to relax the experience had yet not been accorded by the Competent Authority. On 28th April, 1992 the Competent Authority granted the necessary approval relaxing the condition of eligibility of experience, resulting in the appellant being

appointed on probation for a period of two years on 18th June, 1992.

9. As per Regulation 5 of the MEPS Regulation Rules, 1981 a person appointed against a permanent vacancy would be deemed to be confirmed after probation for a period of two years ends. But, before the two years' period, reckoned from 18th June, 1992 came to an end, on account of reduction in the number of students in the school it was informed to the appellant on 27th January, 1994 that her services would be terminated from the end of the academic session which happened to be June, 1994.

10. The reasoning of the learned Single Judge is obvious. The reasoning is that termination was on account of reduction in the number of students enrolled in the school and was permissible in law.

11. Now the argument in the Appeal. The argument is simple. It is that the post was advertised on 14th May, 1991 and the appellant was appointed on 10th July, 1991. There was no reason to give employment on temporary basis for the reason the post has already been sanctioned. The extended limb of the argument is that had this been done by 10th July, 1993, the

appellant could have completed two years service and would be deemed to have been confirmed. On being declared surplus she would have been entitled to the benefit of shelter employment envisaged by Rule 26.

12. The argument is attractive at the first blush but overlooks the fact that the appellant was not having the requisite experience and a request was sent to the Competent Authority to relax the eligibility condition. This relaxation came when the Competent Authority relaxed the eligibility condition on 28th April, 1992. But, since the academic session had commenced, in the interest of imparting education to the students appointment had to be given and thus was given to the appellant on temporary basis for the period of one year commencing from 10th July, 1992. She was appointed on probation on 15th June, 1992. Before she was confirmed the post was abolished.

13. Under the circumstances it cannot be said that the view taken by the learned Single Judge is contrary to the law.

14. The Appeal is dismissed.

15. No costs.

Pravin D.
Pandit

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Pravin D. Pandit
Date: 2019.11.28
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SMT. BHARATI DANGRE, J.

CHIEF JUSTICE