

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7679 OF 2016

Ms.Jyoti Santukrao Deshmukh	.. Petitioner
Vs.	
The President, Bilavas Gram Seva Mandal and ors.	.. Respondents

Mr.Satyajeet A. Rajeshirke, for the Petitioner.
Mr.Uday G.Jaguste, for Respondents No. 1 & 2.
Ms.M.S.Bane, AGP for Respondent No.3.
Mr.Utkarsh Desai I/b Mr.Prashant Bhavake, for Respondent No.5.

CORAM : M.S.KARNIK, J.

DATE : 10th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. Learned Counsel for respondents waive service of Rule.

2. Heard learned Counsel appearing for the petitioner, learned Counsel appearing for respondents No. 1 & 2, learned

AGP appearing for respondent No.3 and learned Counsel appearing for respondent No.5 Presence of respondent No.4 is not necessary as it is now stated that she has left the job.

2. By this Petition filed under Articles 226 & 227 of the Constitution of India, the petitioner is challenging the order dated 31/02/2015 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No. 6 of 2013. Before the School Tribunal, the petitioner challenged her termination. It is the petitioner's case that she was appointed on 07/12/2001 as a Shikshan Sevak. She was appointed after following due process. It appears that she was appointed as untrained teacher. For want of possessing requisite qualifications, her services came to be terminated. The petitioner belongs to Scheduled Tribe reserved category. In fact, Education Officer vide permission letter specifically stated that if a trained qualified teacher is not available then, the untrained teacher who has H.S.C. can be appointed. Pursuant thereto, the petitioner was appointed after issuance of the advertisement and following due process of law

as a Shikshan Sevak.

3. The petitioner came to be terminated on 30/04/2002 for want of necessary qualifications. The School Tribunal by the impugned order dismissed the Appeal on the ground that the appointment of the petitioner is de hors Rule 6 and Schedule B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the said Rules'). The Tribunal was of the opinion that the petitioner did not have requisite qualifications.

4. Before the Tribunal, a specific contention was raised by the petitioner that she is entitled to the benefits of G.R. dated 13/10/2000. The said G.R. specifically provided that if a suitable trained candidate is not available then, the untrained candidate from that particular category is to be appointed. There was backlog of Scheduled Tribe category in respondent-School. At the time of advertisement, no trained qualified teacher was available. Moreover, there was policy permitting

the untrained teacher to acquire requisite qualifications during the stipulated period. However, without considering all this, the Management terminated the services of the petitioner. Learned Counsel for the Management supported the Tribunal's order.

5. I have gone through the order passed by the Tribunal. The Tribunal has only proceeded on the footing that the petitioner is not eligible to be appointed in view of Rule 6 of said Rules. It is not disputed that at the time when the petitioner was appointed, she was untrained. She was so appointed as no trained teacher was available. I find the Tribunal has not considered the Appeal in the context of G.R. dated 13/10/2000. Though Rule 6 of the said Rules prescribes requisite qualifications for appointment, by virtue of G.R. dated 13/10/2000, the provision is made for appointment of untrained Shikshan Sevak from a particular category. The concerned Shikshan Sevak is permitted to acquire qualifications during the period stipulated. Learned Counsel for the petitioner submits that the petitioner has in fact acquired the

qualifications. Learned Counsel for the petitioner contends that the Management de hors G.R. dated 13/10/2000 without permitting the petitioner to acquire the qualifications proceeded to terminate the services of the petitioner. He would invite my attention to the decision of very same Tribunal in Appeal No. 25 of 2015 dated 12/02/2016. In the said Appeal, the Tribunal has granted the benefit of the G.R. to acquire the qualifications within extended time. As the Tribunal has not considered the case of the petitioner in the context of GR dated 13/10/2000, though specifically raised before the Tribunal, and in view of the order dated 12/02/2016 passed by the Tribunal in Appeal No. 25 of 2015, I am of the opinion, that the matter needs to be reconsidered by the Tribunal. Hence, the following order.

ORDER

- (i) The impugned order is quashed and set aside.

- (ii) The matter is remitted back to the Tribunal to re-hear the Appeal No. 6 of 2013 on its own merits.

(iii) The Tribunal to hear the Appeal as expeditiously as possible on its own merits in accordance with law without being influenced by any observations made in this order.

(iv) All contentions are kept open.

6. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)