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Bharat
D. Pandit

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Bharat D. Pandit
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3054 OF 2019**

Nutan Maharashtra Vidya Prasarak Mandal
and Anr.

...Petitioners.

V/s

Smt. Swati Mohan Shevkar and Anr.

..... Respondents.

Ms. Manjari Parasnis for the Petitioner.
Mr. Sugandh Deshmukh for Respondent No.1.
Mr. C.D. Mali, AGP for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: 19th July, 2019

P.C.:-

1] Heard Ms. Parasnis, the learned Counsel for the Petitioners,
Mr. Sugandh Deshmukh, the learned Counsel for Respondent No.1
and learned AGP appearing on behalf of Respondent No.2.

2] The present Petition is by the Management, questioning the
order of the School Tribunal passed on 16/12/2017 in exercise of
powers under Section 9 of the Maharashtra Employees of Private
Schools (Conditions of Service) Regulation Act, 1977 (For short" the
Act") By the order impugned, the appeal against termination,

preferred by Respondent No.1 came to be allowed, thereby setting aside the order of termination and granting reinstatement with full back-wages.

3] Facts necessary for deciding the Petition are as under:-

4] According to Respondent No.1, she holds qualification of M.Com. M.Ed. and was appointed as Shikshansevak on 20/06/2011 by the Petitioners in clear and permanency vacancy after following due process prescribed under the Act and Rules for selection of a teacher. According to Respondent No.1, an advertisement issued by the present Petitioners in the news-paper, which is at page 20 of the Petition, is formed to be the basis for selection and appointment of Respondent No.1 According to Respondent No.1, since she has discharged the work to the satisfaction of the present Petitioners-Management, she was appointed on probation by an order dated 14/06/2012.

5] Respondent No.1 requested the Petitioners-Management to decide her seniority, annoyed with which termination order dated 15/06/2015 came to be issued which has resulted in filing an

appeal against termination.

6] The claim put-forth by Respondent No.1 of a permanent employee, was resisted by the Petitioners by filing reply at Exhibit-17. The Tribunal having recorded that termination of Respondent No.1 was illegal, by order dated 16/12/2017, directed oral termination to be quashed and set aside with reinstatement of Respondent No.1 with full back-wages.

7] The submission of Ms. Parasnis claiming that the order impugned is not sustainable is, on the date of initial appointment of Respondent No.1 i.e. on 20/06/2011, she was not holding appropriate qualification. Relying on the judgment in the matter of *Vaijanath s/o Tatyarao Shinde vs. Secretary, Marathwada Shikshan Prasarak Mandal, Devgiri College Campus, Aurangabad and Others*¹ it is claimed that the person must possess requisite educational qualification on the date of valid appointment. She would urge that services rendered as an untrained teacher cannot be considered for determining seniority.

¹ 2006(6) Mh.L.J. 682

8] The next limb of submission of Ms. Parasnis is, deemed permanency cannot be conferred pursuant to the provisions of sub-section (2) of Section 5, unless it is demonstrated that there is clear and permanent vacancy and the appointment was not for a fixed time. According to her, the procedure for appointment as contemplated under the provisions of Section 5 sub-section (1) read with Rule 9 of the Rules means, an appointment to be made by following prescribed procedure. An appointment contrary to and without following due process, as prescribed, is termed as an illegal appointment. According to Ms. Parasnis, Respondent No.1 was initially appointed on 20/06/2011 for academic year 2011-12. The submissions are, on the said date, Respondent No.1 was not holding the qualification of M.Com. M.Ed. i.e. trained teacher. She would then urge that the second appointment order was given to Respondent No.1 on 14/06/2012, that too for a period of two years and that being so, the initial appointment of Respondent No.1 on 20/06/2011, based on the judgment in the matter of *Priyadarshini Education Trust and others vs. Ratis (Rafia) Bano d/o Abdul Rasheed*² is illegal for want of requisite qualification. The learned Counsel then would urge that in the process of selection and appointment of Respondent No.1, procedure contemplated under

² 2007(6) Mh.L.J. 667

Section 5 and Rule 9 of the Act and Rules is not complied and as on the date of her appointment i.e. on 20/06/2011, Respondent No.1 was appointed against an application and not in response to any advertisement. As such, the contention is, even if Respondent No.1 was appointed, same was against temporary vacancy and on contract basis. As such, it is claimed that the order impugned, is not sustainable.

9] Per contra, Mr. Deshmukh, learned Counsel appearing on behalf of Respondent No.1 submits that on 20/06/2011, first appointment was given considering the fact that Respondent No.1 was not holding requisite qualification of B.Ed. and was undergoing the said course. As such, according to him, her initial appointment on 20/06/2011 was temporary. However, her subsequent appointment on 14/06/2012 is based on her acquiring qualification of trained teacher i.e. M.Com. M.Ed. He claims that the appointment was on probation and that being so, after completion of the probation, deemed permanency can be inferred, which is accepted by the Tribunal in accordance with law. He submits that the order impugned is just and proper and the Petition is liable to be rejected.

10] The fact remains that on the date of appointment in the year 2011-12, Respondent No.1 has conceded that she was not qualified and, as such, the appointment was made on temporary basis till the end of the academic session. It appears that, the Petitioners, thereafter, advertised the post and having noticed that Respondent No.1 has acquired requisite qualification of M.Com. M.Ed, appointed her against the clear vacancy for a period of two years on probation as Shikshansevak must be after considering her experience of last academic year.

11] Acquisition of necessary qualification prior to the date of appointment viz. 14/06/2012 is not an issue in dispute. That being so, the appointment on 14/06/2012, after acquiring the requisite qualification for the post of trained teacher can be inferred. In response to the advertisement published for the said vacant post, making of an application by Respondent No.1 against clear vacancy is rightly inferred by the Tribunal in favour of the Respondent based on the evidence available on record. As such, what can be noticed is, on the date of appointment i.e. on 14/06/2012, there was a clear vacancy and Respondent No.1 was rightly said to have been

appointed on probation as reflected in appointment order dated 14/06/2012.

12] It can also be inferred from the record that the clear vacancy which existed at the relevant time with the Petitioner was advertised in the news-paper and, in response to which, on lawful selection, an appointment was given to Respondent No.1.

13] In the aforesaid background, claim of the Petitioners that there was no sanctioned post and the selection was without following due process of law is rightly rejected by the Tribunal.

14] The another contention canvassed by the learned Counsel for the Petitioners is, the appointment was temporary in nature, as the first appointment was on 20/06/2011 and the second appointment was on 14/06/2012.

15] As far as these two appointment orders are concerned, the fact remains that on 18/06/2011, Respondent No.1 applied for selection as there was clear vacancy. However, she was not holding requisite qualification on that date, as such was issued an appointment

order dated 01/12/2011.

16] The fact remains that on 16/6/2009, the Petitioner got approval for Standard 11 (Commerce Faculty). As a consequence, sanctioned post created with Petitioners was advertised by the Petitioners in the year 2011. The advertisement appears to have been published after Respondent No.1 was made to work in continuation to her earlier appointment order, as academic year has already commenced and so as to avoid loss of study of the students. It is thereafter, the Petitioner, pursuant to the advertisement, had given appointment to Respondent No.1 on probation, considering the fact that she was qualified. That being so, claim of the Petitioners that Respondent No.1 was appointed on contract basis is also liable to be rejected.

17] The School Tribunal, while allowing the appeal, was sensitive to the strength of the students for Standard 11 and 12 of the School run by the Petitioners-Management.

18] The fact that, on 11/08/2011, Principal has issued communication to the Secretary of the Petitioners, informing that

Respondent No.1 was working since 22/06/2011 with the Petitioners and since she was not holding B.Ed. qualification at the relevant time, she was not given regular appointment, was duly taken note of by the Tribunal. The fact remains that Respondent No.2 – Deputy Director of Education has sanctioned three full time posts of teaching staff, justifies the claim of Respondent No.1 of appointing her against clear vacancy.

19] The Tribunal has proceeded to consider that in view of appointment order dated 14/06/2012, Respondent No.1 has completed tenure of her probation during which period there were no complaints and the fact that there was no inquiry against Respondent No.1 by the Management, the order of termination is illegal.

20] In the light of the findings of fact based on the evidence recorded by the Tribunal which are looked into by this Court in foregoing paras, it can be easily inferred that the appointment of Respondent No.1 pursuant to Order dated 14/06/2012 was in compliance of the provisions of Section 5 and Rule 9 of the Act and Rules that too against the clear vacancy. Appointment of

Respondent No.1 was in accordance with the legal procedure prescribed thereunder viz sanctioned post, advertisement in the news-paper and accordingly selection was made. In view of above, in my opinion, judgment relied upon by the learned Counsel for the Petitioner in the matter of *Vajjnath* cited supra, will be of no assistance.

21] In the wake of aforesaid finding, in my opinion, the order of the Tribunal impugned in the Petition does not warrant any interference. Petition as such fails and the same is dismissed.

(NITIN W. SAMBRE, J.)