

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4420 OF 2016

Lata Prakash Powar

... **Petitioner*****Versus***

Dr. D.Y. Patil Educational Academy & Ors.

... **Respondents**

.....

Smt. Varsha Palav i/b The Laureate for the Petitioner.

Mr. K. S. Bapat i/b. Mr. Neel G. Helekar, Advocate for Respondent Nos.1 and 2.

Smt. V. S. Nimbalkar, AGP for Respondent No.3.

Mr. S. P. Thorat, Advocate for Respondent Nos.4 & 5.

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CORAM : A. S. GADKARI, J.**DATE : 10th OCTOBER, 2019****P. C. :**

1] By the present Petition under Article 227 of the Constitution of India, the petitioner has taken exception to the Judgment and Order dated 17th August 2015 passed by the Presiding Officer of Additional School Tribunal, Navi Mumbai (for short “the School Tribunal”) in Appeal No. 70 of 2002 filed by the petitioner under Section 9(1)(a) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1997 (for short “the said Act”) and the Rules of 1981 framed therein, thereby confirming the Order of termination of the petitioner dated 26th March 2002 by the respondent No.1.

2] Heard Ms. Palav, learned counsel for the petitioner, Mr. Bapat,

learned counsel for the respondent No.1 and 2, learned AGP for the Respondent No.3 and Mr. Thorat, learned counsel for respondent Nos. 4 and 5. Perused the record.

3] The record indicates that, the services of the petitioner with the respondent No.1 – Institution were terminated by an Order dated 26th March 2002 on the ground that the petitioner was not a qualified teacher as required for primary section of respondent no. 1 – Institution and her demand of absorption in the secondary division in the respondent No.1's School can not be accepted for want of vacancies in secondary division. Being aggrieved by the said termination Order, the petitioner filed Appeal No. 70 of 2002 before the Additional School Tribunal, Navi Mumbai. The said appeal was dismissed by impugned Order dated 21st November 2002.

4] The record further indicates that, by an Order dated 25th February 2015 passed in Writ Petition No. 2598 of 2003, this Court had set aside the Order dated 21st November 2002 passed by School Tribunal and restored the said Appeal No. 70 of 2002 to the file of the School Tribunal. The School Tribunal was directed to decide the said Appeal within stipulated period therein, in view of the questions formulated by this Court in connected Writ Petition No. 2759 of 2003 and more particularly in para 12 of the said decision, decided on the same day.

5] The School Tribunal has accordingly after hearing the parties, dismissed the said Appeal preferred by the petitioner by its Judgment and Order dated 17th August 2015.

6] Ms. Palav, learned counsel for the petitioner submitted that, on the date of passing of the Order of termination i.e. on 26th March 2002, as a matter of fact, in view of the ratio laid down by the Division Bench of this Court in the case of *Mr. Kondiba Mirashe Vs. State of Maharashtra and Ors. reported in 2003(2) M.L.J. 432*, the post for trained teacher having requisite qualification was already available in the institution of respondent No.1. However, the respondent No.1 without considering the said fact proceeded to terminate the services of petitioner. She further submitted that, the Tribunal has erroneously recorded a finding that, the petitioner is gainfully employed and was working as Principal in Good Shepherd School, Navi Mumbai. She submitted that, the respondent No.1 has not produced any evidence on record to substantiate its claim that, the petitioner was working with the said school.

She, further submitted that, the Tribunal has committed serious error while dismissing the said appeal. She therefore, prayed that the impugned order passed by the School Tribunal may be set aside by allowing the present petition.

7] Per contra, Mr. Bapat, learned counsel for the respondent No.1 vehemently opposed the petition and submitted that, the respondent No.1 had produced a list of teaching staff (seniority wise) before the School Tribunal and as per the said seniority list, the petitioner was at Sr. No.4 and even after applying the ratio laid down in the case of *Kondiba Mirashe (supra)*, the petitioner could not have been absorbed in the

services of the respondent No.1. He submitted that, the School Tribunal has rightly recorded a finding that, the petitioner is gainfully employed as Principal in Good Shepherd School, Navi Mumbai. He further submitted that, there is no error committed by the School Tribunal while passing impugned Judgment and Order and therefore the present petition be dismissed summarily.

8] At the outset, it is to be noted here that, after restoration of the appeal preferred by the petitioner and as per directions issued by this Court by its Order dated 25 February 2015, the School Tribunal has formulated necessary points and has considered the eligibility of the petitioner for the absorption in the services of the respondent No.1. The Tribunal has further considered the point of gainful employment of the petitioner in other institution.

It is to be further noted here that, in view of the ratio laid down in the case of *Kondiba Mirashe (supra)* and as reproduced by co-ordinate Bench of this Court in para No. 10 of Order dated 25th February 2015, trained graduate teachers should be appointed in the primary school in the ratio of 3:1 i.e. out of every four sanctioned posts of teachers, first three teachers should possess the educational qualification of S.S.C. and D.Ed. and the fourth teacher should be a graduate with B.Ed./D.Ed. The petitioner is having qualification of B.A.B.ed. and therefore, she falls within the category of 25% of the posts of teachers. As per the record, there were two other persons who were senior to

petitioner on the date of her termination i.e. on 26th March 2002. That, one Mrs. Sandya Prasad was working as an Assistant Teacher and was senior to the petitioner and therefore the petitioner even otherwise could not have been absorbed in the services of the respondent No.1 – Institution.

9] The School Tribunal has recorded a positive finding that, the petitioner was gainfully employed as Principal in Good Shepherd School, Navi Mumbai. The said finding is recorded in view of the evidence produced before the School Tribunal by the respondent No.1 and in my view interference in it by this Court is wholly unwarranted.

10] The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross

and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

11] After taking into consideration the entire material available on record, this Court is of the considered view that, the termination of services of the petitioner by the respondent No.1 by its Order dated 26th March 2002 is legal.

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

(A. S. GADKARI, J.)